



O:
CC:

WMD

RA/RE

LTR. ONLY

matlack, inc.

pipeline on wheels®

EPA Region 5 Records Ctr.



338136

ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

July 26, 1995

RECEIVED

FEDERAL EXPRESS AND
CERTIFIED - RETURN
RECEIPT REQUESTED

U.S. EPA REGION 5
WASTE MANAGEMENT DIVISION
OFFICE OF THE DIRECTOR

Valdas V. Adamkus
Regional Administrator
Gail C. Ginsberg
Regional Counsel
U. S. Environmental Protection
Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RECEIVED
JUL 27 1995
U. S. EPA REGION 5
OFFICE OF REGIONAL COUNSEL

RE: **Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")**

Dear Mr. Adamkus and Ms. Ginsberg:

The purpose of this letter is to bring to your attention what I consider to be inexcusable conduct by two U.S. EPA employees: one is a field investigator, Mr. Frank Boenzi; the second is an Assistant Regional Counsel, Ms. Sherri L. Estes.

I have attached a chronology of events, correspondence and conversations over the past several years. Supporting documentation is included.

I should like to preface my remarks by stating that I have had occasion to negotiate with various U.S. EPA officials at Superfund sites across the country and I find Mr. Boenzi's and Ms. Estes' conduct to be far from the norm. Matlack has a long history of cooperating with U.S. EPA and with PRP Groups where it has been found to have liability under CERCLA. My experience has always involved fair, courteous and well informed U.S. EPA officials anxious to receive and share information.

Valdas V. Adamkus
Regional Administrator
Gail C. Ginsberg
Regional Counsel
Page 2
July 26, 1995

As you can see from the attached chronology, from the very beginning of Matlack's involvement at this Site, it was improperly denied access to information. Initially, Matlack was told nothing about its involvement at the Site. Ms. Estes claimed that her information was all privileged and exempt from disclosure. Instead, she expected Matlack to blindly enter into an Administrative Order and begin expending monies on a remedy. (See Tabs 1 through 10)

According to the EPA, Matlack received a 104 (e) request simply because it had been listed as a PRP at a neighboring site. (See Tab 13). Matlack then became a PRP based solely on one paragraph of interview notes taken by Mr. Boenzi relative to a conversation he purportedly had with a Mr. Larry Sherwin, a former driver for Vallet Paint.

Matlack was forced to sue U.S. EPA in federal district court just to get this one paragraph. Matlack has never had to resort to this at any other superfund site. The judge was not amused and had this to say in his opinion: "This Court finds that the EPA's withholding of the documents was without a reasonable basis in law." (See Tab 15 for the full text of the opinion of James L. Latchum, Senior Judge, United States District Court, District of Delaware.)

Shortly after receiving this information, I personally interviewed Mr. Sherwin. He flatly denied having told Mr. Boenzi what is contained in the interview notes. I obtained an affidavit to this effect.

Based on the affidavit, I asked that Matlack be dropped as a PRP. Ms. Estes refused.

Unbeknownst to me, Mr. Boenzi and a second investigator then visited Mr. Sherwin and had him sign a sloppily handwritten statement that he was too ill to even read at the time.

At this point, you should probably read what Mr. Sherwin has to say about this EPA statement and the manner in which it was obtained. Please refer to Tab 25 for Mr. Sherwin's July 25, 1995 affidavit.

Paragraphs 4 and 5 of this affidavit give his medical condition at the time:

"4. Two (2) civil investigators from U.S. EPA interviewed me on October 25, 1994. I was bedridden at the time and needed a nurse to visit me several times each day. I had been bedridden for the past seven (7) months. Most of that time I was hospitalized, having suffered kidney failure and having had several surgical procedures relating to spina bifida, a spinal defect which I have had since birth. Most recently, I had a hip and my second leg removed and had been on morphine for a month thereafter.

Valdas V. Adamkus
Regional Administrator
Gail C. Ginsberg
Regional Counsel
Page 3
July 26, 1995

5. At the time I was interviewed by the U.S. EPA civil investigators, I was off of the morphine but still on various medications. I do not recall which medications I was on, but I do recall that my eyes were very sensitive to light and that it was very difficult for me to see, almost impossible to read. I was not feeling well, had a very short attention span, and did not particularly care if my statement was being recorded properly by the civil investigators."

Paragraphs 7, 8, 9 and 10 describe the conduct of the investigators:

"7. I recall that both civil investigators kept trying to put words in my mouth. After I would answer a question, they would repeat back to me what I had said in a different way and with a different meaning before writing the information down. For example, I would refer to taking one (1) to five (5) gallon containers from Vallet Paint to one of the Sites and the civil investigators would refer to these cans as drums, even though I had made the distinction between pint size, gallon size, five (5) gallon size, sixteen (16) gallon size and fifty-five (55) gallon size containers. As another example, I mentioned that one of Vallet Paint's customers was Matlack and that I was using Matlack as an example of the kinds of deliveries that I made for many customers. The civil investigators would constantly include Matlack's name in the statement as it was being written up.

8. I recognize my signature at the end of the EPA Statement (Exhibit A). I also initialled the EPA Statement in a few different places where "L. S." is noted. Nothing else in the eight (8) page statement was written or rewritten by me.

9. At the end of about a two (2) hour interview, I was extremely tired and feeling ill. I wanted the civil investigators to leave and did not care whether the statement was accurate or not. I did not even read the entire statement. My eyes would not focus that well. I initialled and signed where I was asked to.

10. I do not believe that I told the civil investigators what ended up in the EPA Statement and would like to retract the statement."

The remainder of the affidavit clarifies the testimony Mr. Sherwin has now given to several different people.

Valdas V. Adamkus
Regional Administrator
Gail C. Ginsberg
Regional Counsel
Page 4
July 26, 1995

These are not even isolated incidents. Mr. Boenzi managed to work Matlack's name into some other interview notes as well. Although I have yet to see the interview notes, it appears that Mr. Boenzi also interviewed a former employee of Gulf Oil, Mr. John T. Radon and that the interview notes indicate that Matlack took 8,000 gallon tankers to the Dura Landfill. Ms. Estes later deposed Mr. Radon. When questioned about these interview notes, he failed to corroborate what was in them. See Tab 23.

Both Boenzi interviews, the second one with Mr. Sherwin and the one with Mr. Radon, occurred after Matlack sued EPA in federal court and discredited the first round of Boenzi telephone notes.

I believe Matlack is entitled to an explanation. I would like to know why Mr. Boenzi is willing to go to such extremes in his efforts to implicate Matlack. I would also like to know Ms. Estes involvement in all of this.

The irony of this situation is striking. I had a conversation with Ms. Estes on June 22, 1995. In that conversation, she accused me of obtaining Mr. Sherwin's June 1994 affidavit by duress (based on statements she claims an unnamed civil investigator made to her). My response to this is in Tab 20.

I was so outraged by this that I flew to Toledo the next morning to speak with Mr. Sherwin. He signed a second affidavit for me dated June 23, 1995. I forwarded this affidavit to Ms. Estes by my letter dated June 26, 1995 (See Tab 22).

When I received from Ms. Estes a copy of Mr. Sherwin's October 25, 1994 statement, I sent him a copy. He did not have one. He read through it and called me to tell me how badly he had been duped. We spoke for close to two hours. That conversation resulted in his latest affidavit.

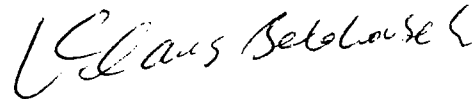
I hope that you will agree that the above warrants an independent review of Mr. Boenzi's and Ms. Estes actions in this matter. I will write to you separately outlining the merits of Matlack's various requests to be dropped as a PRP at this Site.

Valdas V. Adamkus
Regional Administrator
Gail C. Ginsberg
Regional Counsel
Page 5
July 26, 1995

You may reach me at my direct dial of 302/426-2806 should you have any questions, but I would appreciate the courtesy of a written response.

Thank you for your attention to this.

Very truly yours,

A handwritten signature in black ink, reading "Klaus Belohoubek", with a stylized flourish at the end.

Klaus M. Belohoubek
Vice President - General Counsel

KMB/gmh

Enclosures

1930



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

CS-29A

December 27, 1994

Klaus M. Belohoubek
Vice President--General Counsel
Matlack, Inc.
One Rollins Plaza
P.O. Box 8789
Wilmington, DE 19899

Re: Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")

Dear Mr. Belohoubek:

This letter is in response to your letters of June 14, 1994 and August 3, 1994, in which you requested that U.S. EPA drop Matlack, Inc. as a PRP at the Sites on the basis on information provided to date.

While U.S. EPA will certainly take into account any alleged inconsistencies in Mr. Sherman's statements before issuing any mandatory orders to Matlack to become involved in any Site cleanups, U.S. EPA regrets that it will not be able to honor your request to have Matlack removed from the Stickney/Tyler PRP list. Because our PRP investigations are always on-going, and because the Agency expects to be involved at the Sites for an extended period of time, it would be very resource-intensive for U.S. EPA to investigate, at any given point in time, the evidence with regard to one of many PRPs that may have been implicated at the Sites, to determine whether at that "snapshot" time, there is sufficient evidence to warrant a particular entity's listing as one of the potentially responsible parties at the Site.

I spelled out potentially responsible parties intentionally, because I wanted you to focus on just what the Agency has done in naming Matlack as a PRP. Matlack's inclusion on the PRP list means only that the Agency has found that there is some evidence that Matlack might be liable at the Sites, not that we now have sufficient evidence to issue to Matlack a unilateral administrative order, or to meet the standards of the Federal Rules of Civil Procedure and file a cost recovery lawsuit against Matlack under § 107 of Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA).

Klaus M. Belohoubek
Matlack, Inc.

December 27, 1994

Page - 2 -

Region V practice is to notify PRPs of their potential involvement as early as practicable in the PRP search process. That way, they can monitor the progress of the administrative procedure, and assess their position vis-a-vis the Agency. Most entities, although obviously not Matlack, appreciate the opportunity to get somewhat of a "heads-up" on Agency plans. However, Region V will not change its practice because of the objections of one PRP.

I hope that this letter explains something to you about Region V procedures regarding PRP lists. Although you may not agree with the substance of the decision, I hope that you will agree that Region V's practice is a reasonable means of meeting the Agency's statutory goals under CERCLA.

Sincerely,

A handwritten signature in cursive script that reads "Sherry L. Estes".

Sherry L. Estes
Assistant Regional Counsel

cc: **Beth Reiner**
Tom Barounis
Marsha Adams
Alan Margolis, OGC

TABLE OF CONTENTS

CHRONOLOGY

<u>DATE</u>	<u>DESCRIPTION</u>	<u>TAB</u>
August 12, 1993	Matlack, Inc. receives 104 (e) Request but is not yet designated as a PRP at the Site.	-
August 23, 1993	Telephone conversation involving Mr. Belohoubek, Ms. Estes and Tom Barounis (U.S. EPA, Remedial Project Manager). U.S. EPA states its unwillingness to provide any information alleging a nexus between Matlack and the Site.	-
August 24, 1993	Letter from Mr. Belohoubek to Thomas W. Mateer (U.S. EPA, Chief Superfund Program), noting recalcitrance of both Ms. Estes and Mr. Barounis, and asking for information alleging a nexus between Matlack and the Site.	1
December 1, 1993	U.S. EPA General Notice Letter designating Matlack as a PRP for the first time and inviting all PRPs to negotiate an AOC.	2
December 7, 1993	Letter from Mr. Belohoubek to Ms. Estes, Mr. Barounis and Wendy L. Carney (U.S. EPA, Acting Chief) responding to PRP designation of December 1, 1993 and repeating request for information alleging a nexus between Matlack and the Site.	3
December 16, 1993	Telephone conversation between Mr. Belohoubek and Ms. Estes. Ms. Estes states that no documents exist linking Matlack to the Site; she does have information based on interviews which she refuses to divulge.	-
December 17, 1993	Letter from Mr. Belohoubek to Ms. Estes, Mr. Barounis and Ms. Carney, recounting conversation with Ms. Estes on December 16, and repeating request for information alleging a nexus between Matlack and the Site.	4
December 23, 1993	Letter from Mr. Belohoubek to Mr. Barounis in which Matlack declines to negotiate terms of AOC until its prior requests for information are answered.	5
January 4, 1994	Letter from Mr. Belohoubek to Mr. Barounis in which Matlack again declines to negotiate terms of AOC until its prior requests for information are answered.	6

<u>DATE</u>	<u>DESCRIPTION</u>	<u>TAB</u>
January 17, 1994	Matlack files FOIA appeal with U.S. EPA's Washington, DC FOIA Officer.	7
January 19, 1994	Letter from Mr. Belohoubek to Ms. Estes attaching three (3) affidavits of Matlack officials confirming limited nature of Matlack's involvement with Vallet Paint. The affidavits were prepared to rebut Ms. Estes unsubstantiated allegation that Vallet Paint disposed of Matlack's waste at the Site.	8
March 21, 1994	Letter from Mr. Belohoubek to Ms. Estes referring to several affidavits of Vallet Paint officials provided by counsel to Vallet Paint which confirm that Vallet Paint did not dispose of any of its customers' waste and repeating Matlack's request for information alleging a nexus between Matlack and the Site.	9
March 25, 1994	Matlack files suit in federal district court to compel U.S. EPA to comply with its FOIA obligations.	-
April 14, 1994	Letter from Mr. Belohoubek to Ms. Estes declining again to participate in AOC until Matlack's FOIA request is responded to. [The proposed AOC was sent by Mr. Barounis by his letter dated March 4, 1994. The envelope indicates that it was mailed over one month later on April 6, 1994.]	10
April 15, 1994	Telephone conversation between Fred Cottrell (outside counsel for Matlack) and Marylyne Lipfert (U.S. EPA) in which Ms. Lipfert offers to provide in redacted form what she then claimed to be the only responsive document to Matlack's FOIA request - one paragraph of notes of an interview with Larry Sherwin, a former employee of Vallet Paint.	-
April 25, 1994	U.S. EPA files its answer to Matlack's complaint after Matlack declines to settle the suit in exchange for the redacted Sherwin interview notes.	-
May 4, 1994	U.S. EPA informs Matlack's counsel that it has located six (6) additional documents responsive to the FOIA request.	-

<u>DATE</u>	<u>DESCRIPTION</u>	<u>TAB</u>
May 19, 1994	U.S. EPA finally provides Matlack with notes of the Sherwin interview and the other responsive documents.	11
June 14, 1994	Letter from Mr. Belohoubek to Ms. Estes enclosing newly executed affidavit from Larry Sherwin which rebuts U.S. EPA notes of Sherwin interview and exculpates Matlack. Mr. Belohoubek also requests that Matlack be dropped as a PRP.	12
July 15, 1994	Letter from Patrice C. Hannigan (Assistant U.S. Attorney) to Sandra Sawyer (outside counsel to Matlack) stating that U.S. EPA sent Matlack a 104 (e) request simply because it was on the mailing list of PRPs at the adjacent Dura site. Matlack had questioned the fact that all documents responsive to its FOIA request, including the notes of the Sherwin interview, were dated subsequent to the date of the 104 (e) request.	13
July 28, 1994	Matlack withdraws its federal district court FOIA action relative to the production of information (but continues the action for the purpose of recovering its attorneys fees).	-
August 3, 1994	Letter from Mr. Belohoubek to Ms. Estes repeating prior requests to have Matlack dropped as a PRP.	14
November 15, 1994	Opinion and Order of James L. Latchum, Senior Judge, United States District Court, District of Delaware, denies Matlack's motion for attorney's fees due to the commercial benefit Matlack derived from its suit, but severely chastises U.S. EPA:	15

Relevant portions of Judge Latchum's opinion follow:

"An analysis of the facts before this Court, however, compels the conclusion that Matlack did substantially prevail in this action."

"Here, Matlack filed three requests for information. In each instance the requests were either inexplicably ignored or handled in a way that violated regulations, with the net result that no disclosure was forthcoming."

<u>DATE</u>	<u>DESCRIPTION</u>	<u>TAB</u>
	<p>"At oral argument, the EPA suggested that a "simple telephone call" would have resolved the situation. This Court is unconvinced."</p> <p>"Based on the present record, this Court concludes that the release of the relevant documents was substantially caused by the instant action."</p> <p>"Because this Court has found that the Matlack's action was reasonably necessary and substantially caused the release of the documents, this Court further finds that the plaintiff "substantially prevailed" in this action, and is therefore eligible for attorney's fees."</p> <p>"This Court therefore finds that the EPA's withholding of the documents was without a reasonable basis in law and that the EPA's delay was not justified."</p>	
December 27, 1994	Letter from Ms. Estes to Mr. Belohoubek refusing to drop Matlack as a PRP - purportedly because U.S. EPA's investigation had not yet been completed.	16
April 13, 1995	Letter from Elizabeth Reiner (U.S. EPA, Assistant Regional Counsel) to Jane Montgomery (counsel to certain other PRPs) stating that Matlack, among others, may be a PRP at the Site.	17
May 19, 1995	Letter from Mr. Belohoubek to Ms. Reiner (in response to her April 13, 1995 letter) making a FOIA request for any new information which might allege a nexus between Matlack and the Site.	18
May 24, 1995	Additional Larry Sherwin affidavit executed for officials of Vallet Paint. Sherwin again denies taking any waste materials from any Vallet Paint customer to the Site.	19

<u>DATE</u>	<u>DESCRIPTION</u>	<u>TAB</u>
June 22, 1995	Telephone conversation between Ms. Estes and Mr. Belohoubek. Ms. Estes offers to provide redacted interview transcripts in exchange for having Matlack drop its FOIA appeal. Matlack declines to do so until the information has been received and reviewed. Mr. Belohoubek again suggests that Matlack should be dropped from the PRP list and Ms. Estes responds by accusing Mr. Belohoubek of obtaining the Sherwin affidavit by duress (based on statements made to her by an unnamed U.S. EPA civil investigator).	-
June 22, 1995	Letter from Mr. Belohoubek to Ms. Estes confirming the above conversation and asking for the name of the U.S. EPA investigator.	20
June 23, 1995	Letter from Ms. Estes to Mr. Belohoubek confirming the prior day's conversation relative to the FOIA request and providing a redacted release of some of the information requested.	21
June 23, 1995	Mr. Belohoubek visits Larry Sherwin to obtain an additional affidavit. Mr. Sherwin again denies making statements attributed to him by the U.S. EPA investigator and exculpates Matlack.	-
June 26, 1995	Letter from Mr. Belohoubek to Ms. Estes attaching Mr. Sherwin's affidavit.	22
June 27, 1995	Letter from Mr. Belohoubek to Ms. Estes referring to transcript of John T. Radon deposition which Ms. Estes released in her above letter dated June 23, 1995. The transcript reveals that the notes of the U.S. EPA civil investigator, Mr. Boenzi, directly conflict with the testimony of the witness. Mr. Belohoubek asks that Matlack's FOIA request extend to all notes of this investigator.	23
July 17, 1995	Letter from Ms. Estes to Mr. Belohoubek providing additional redacted release of some of the information requested in Matlack's May 19, 1995 FOIA request.	24
July 25, 1995	Affidavit of Mr. Sherwin retracting statement made for U.S. EPA	25



matlack, inc.
pipeline on wheels[®]

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

August 24, 1993

CERTIFIED - RETURN
RECEIPT REQUESTED

Thomas W. Mateer, Chief
Superfund Program Management Branch
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: **Request for Information Pursuant to Section 104(e) of CERCLA for the Stickney Avenue Landfill and the Tyler Street Dump Sites in Toledo, Ohio**

Dear Mr. Mateer:

I am in receipt of the above referenced Request for Information.

Our preliminary investigation into this matter has not yielded any information linking Matlack to the Sites in question. As is often the case, our records do not extend to the time period for which U.S. EPA is seeking information (1951 - 1981).

If U.S. EPA would be good enough to share with me any information it may have suggesting a nexus between Matlack and these Sites, it would greatly assist us in the completion of our investigation. I should point out that neither Mr. Barounis nor Ms. Estes were willing to do so when I spoke with them yesterday. I find this somewhat unusual. It has been my experience that U.S. EPA tends to be more cooperative in these matters.

As soon as our investigation has concluded, I will forward a more complete response to the Request for Information.

Please feel free to contact me at my direct dial of 302/426-2806 to discuss the above. Thank you.

Very truly yours,

Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh
1356

cc: Sherri Estes, Esquire
Thomas Barounis



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 01 1993

REPLY TO THE ATTENTION OF:

HSRM-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matlack Company
1728 Drouillard Road
Toledo, OH 43612

RE: Stickney Avenue Landfill and
Tyler Street Dump ("Stickney/Tyler Facility")
General Notice of Potential Liability

Dear Sir or Madam:

The United States Environmental Protection Agency (U.S. EPA) has documented the release or threat of release of hazardous substances, pollutants and contaminants into the environment from the above-referenced facility, and is planning to spend public funds to investigate and control these releases. This action will be taken by U.S. EPA pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq. (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (SARA), unless U.S. EPA determines that such action will be done properly by a responsible party or parties. Responsible parties under CERCLA include the current and former owners and operators of the facility, persons who generated the hazardous substances, and persons who were involved in the transport, treatment or disposal of the hazardous substances at the facility. Under Section 107(a) of CERCLA, where U.S. EPA uses public funds towards the cleanup of the hazardous substances, responsible parties are liable for all costs associated with the removal or remedial action and all other necessary costs incurred in cleaning up the facility, including investigation, planning and enforcement costs.

U.S. EPA is currently planning to conduct an Engineering Evaluation/Cost Analysis (EE/CA) at the above referenced facility. The purpose of the EE/CA will be to determine the nature and extent of threats to human health and the environment posed by the facility and to evaluate appropriate alternatives for reducing or eliminating such threats.

U.S. EPA has received information that your organization may have owned or operated the facility or generated or transported hazardous substances that were disposed of at the facility. By this letter, U.S. EPA notifies your organization of its potential liability with regard to this matter and encourages your organization, as a potentially responsible party (PRP), to agree to reimburse U.S. EPA for costs incurred to date and to voluntarily perform or finance the response activities which U.S. EPA has determined or will determine are required at the facility. U.S. EPA is willing to discuss with you the entry of an appropriate administrative consent order under which you would perform or finance response activities and reimburse U.S. EPA for its costs. A draft Administrative Order on Consent, and a Statement of Work for the Engineering Evaluation and Cost Analysis have been enclosed along with this Notice.

If a consent order cannot be promptly concluded, U.S. EPA may issue a unilateral order under Section 106 of CERCLA, requiring your organization to perform specified work. Under Sections 106 and 107 of CERCLA, your organization may be liable for reimbursement of U.S. EPA's costs, for statutory penalties, and for treble damages for noncompliance with such an order.

The U.S. EPA would like to encourage good faith negotiations between your organization and the Agency and among your organization and other PRPs for the facility. To assist the PRPs in negotiating with U.S. EPA concerning this matter, U.S. EPA is providing a list of the names and addresses of any other PRPs to whom this or a similar notification is being or has been sent. This list is appended to this letter. It should be noted that inclusion on or exclusion from the list does not constitute a final determination by the Agency concerning the liability of any party for response actions at the facility or payment of past costs. In order to effectively negotiate a consent order, it is important for the PRPs to organize themselves and establish a Steering Committee.

By a copy of this letter, the U.S. EPA is notifying the State of Ohio and the Natural Resources Trustees, in accordance with Section 122(j) of CERCLA, of the Agency's intent to enter into negotiations concerning the implementation of response action at the facility, and is also encouraging them to consider participation in such negotiations.

As a potentially responsible party, your organization should notify U.S. EPA in writing within fourteen (14) days of receipt of this letter of its willingness to perform or finance the activities described above and to reimburse U.S. EPA for its costs. Your response should be sent to:

Tom Barounis, Remedial Project Manager
U.S. EPA - Region V
Office of Superfund
Minnesota/Ohio Remedial Response Branch (HSRM-6J)
77 W. Jackson Street
Chicago, Illinois 60604

If U.S. EPA does not receive a timely response, U.S. EPA will assume that your organization does not wish to negotiate a resolution of its potential responsibility in connection with the facility and that your organization has declined any involvement in performing the response activities. It is U.S. EPA's intention to conclude negotiations within thirty (30) days after the 14 day response period established for this letter. In order to establish a uniform date for the calculation of the negotiation period, the 14-day response period will be considered to commence five (5) days after the date of this letter.

Your response should indicate the appropriate name, address and telephone number for further contact with your organization. If your organization is already involved in discussions with State or local authorities or involved in a lawsuit regarding this facility, your organization may continue such activities as it sees fit. This letter is not intended to advise your organization or direct it presently to restrict or discontinue any such activities already underway; however, your organization is advised to report the status of those discussions or actions in its response to this letter and to provide a copy of its response to any other parties involved in those discussions or actions.

If you need further information regarding this letter, you may contact Sherry L. Estes, of the U.S. EPA Office of Regional Counsel at (312) 886-7164.

Due to the nature of the problem at this facility and the attendant legal ramifications, U.S. EPA strongly encourages your organization to submit a written response within the time frame specified herein. We hope your organization will give this matter its immediate attention.

Sincerely yours,



Wendy L. Carney, Acting Chief
Minnesota/Ohio Remedial Response Branch

Enclosures

cc: Sheila Huff, U.S. DOI

Donald Schregardus, Director, OEPA
Jeff Wander, OEPA-NWDO
Susan Nitecki, Enforcement Coordinator, OEPA-CDO
W. Anne Lemelle, Cooper Industries
Jane E. Montgomery, Schiff, Hardin and Waite
E.I. DuPont De Nemours & Company
Gencorp Polymer Products
Joseph P. Sheehy
J. Carlisle Peet, Matlack, Inc.
Owens-Illinois, Inc.
Stephen P. Calardo, Altman & Calardo Co.
Shane A. Farolino, Spengler Nathanson



matlack, inc.
pipeline on wheels ®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 800-MATLACK

December 7, 1993

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Tom Barounis,
Remedial Project Manager
U.S. EPA - Region V
Office of Superfund
Minnesota / Ohio Remedial
Response Branch (HSRM-6J)
77 W. Jackson Street
Chicago, Illinois 60604-3590

Wendy L. Carney,
Acting Chief
U.S. EPA - Region V
Office of Superfund
Minnesota / Ohio Remedial
Response Branch
77 W. Jackson Street
Chicago, Illinois 60604-3590

Sherry L. Estes, Esquire
Office of Regional Counsel
U.S. EPA - Region V
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")
General Notice of Potential Liability**

Dear Ms. Carney, Ms. Estes and Mr. Barounis:

This letter is in response to Ms. Carney's letter to Matlack dated December 1, 1993 enclosing a proposed Administrative Order on Consent and requesting an indication from Matlack as to its willingness to perform or reimburse U.S. EPA with respect to certain activities proposed at the Facility.

Matlack is unable to respond to your request at this time. Matlack received a Section 104(e) Request for Information relative to the Facility on August 12, 1993. Matlack was not designated as a "PRP" at that time.

I spoke with both Mr. Barounis and Ms. Estes on August 23, 1993 in an attempt to discover the alleged nexus between Matlack and the Facility. Neither was willing to provide me with any information.

I made a written request for such information in an August 24, 1993 letter to Thomas W. Mateer, Chief, Superfund Program Management Branch for Region V. Mr. Barounis and Ms. Estes were copied on this correspondence.

Matlack responded to the Section 104 (e) Request for Information by my letter dated September 3, 1993. I received no reply to my requests for information and no response to the 104 (e) response. Now, for the first time, Matlack has been designated as a "PRP."

I would appreciate it if you would make available to me any and all information which U.S. EPA has suggesting a connection between Matlack and the Facility. If necessary, please consider this a request for such information under FOIA. Matlack agrees to reimburse reasonable copying charges.

Please understand that Matlack has been incorrectly designated as a PRP at a number of sites simply because it is a transporter. As a contract carrier, Matlack transports various commodities, including hazardous wastes, for its customers. When transporting hazardous waste, it does not and has not selected the disposal or treatment facilities or sites to which such hazardous wastes are or have been transported. Accordingly, Matlack can have no liability for such movements under CERCLA. This is a position that Matlack has successfully reiterated in connection with Superfund Sites across the country.

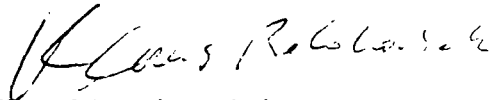
It is clear from the plain meaning of CERCLA Section 107(a)(4), clear from legislative history (see remarks made by Senators Chafee and Randolph during consideration of RCRA Amendments at 130 Cong. Rec. S9177, daily ed. July 25, 1984) and well settled by case law, that in order to find a transporter liable under CERCLA, there must be a finding that the site was selected by the transporter. This point was recently reiterated in United States v. Western Processing Co., 1991 WL 10317 (W.D. Wash). See also United States v. New Castle County, 727 F Supp 854 (D. Del. 1989); Jersey City Redevelopment Authority v. PPG Industries, 18 Env't'l L. Rep. 20364-20366 (D.N.J. 1987).

Furthermore, and perhaps more significantly, U.S. EPA's own stated policy is to refrain from sending PRP notice letters to transporters, until such time as U.S. EPA has determined that the transporter selected the disposal or treatment facility or site. See Memorandum from G. Lucero and F. Stiel to U.S. EPA Regional Counsels and Regional Waste Management Division Directors, December 23, 1985.

If Matlack has been named as a PRP at the Facility due to its status as a transporter, please consider this letter a request to have the PRP designation stricken.

Only after U.S. EPA responds to Matlack's information requests, will it be in a position to respond to Ms. Carney's December 1, 1993 request. In the interim, please feel free to contact me with regard to the above. Finally, please address any future correspondence in this matter to my attention at the address on this letterhead, not to Matlack's local terminal in Ohio. Thank you.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Klaus M. Belohoubek". The signature is fluid and cursive, with the first name "Klaus" being more prominent.

Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh

1471

—



matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

December 17, 1993

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Tom Barounis,
Remedial Project Manager
U.S. EPA - Region V
Office of Superfund
Minnesota / Ohio Remedial
Response Branch (HSRM-6J)
77 W. Jackson Street
Chicago, Illinois 60604-3590

Wendy L. Carney,
Acting Chief
U.S. EPA - Region V
Office of Superfund
Minnesota / Ohio Remedial
Response Branch
77 W. Jackson Street
Chicago, Illinois 60604-3590

Sherry L. Estes, Esquire
Office of Regional Counsel
U.S. EPA - Region V
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")
General Notice of Potential Liability**

Dear Ms. Carney, Ms. Estes and Mr. Barounis:

Ms. Estes telephoned me on December 16, 1993 in response to my letter to all of you dated December 7, 1993. Ms. Estes informed me that Matlack has been listed as a "PRP" at the Facility not as a transporter but as a generator. Beyond that, it appears U.S. EPA is simply unwilling to divulge any information. Ms. Estes did inform me that U.S. EPA has no documents linking Matlack to the Facility, but does have information based on one or more interviews of unidentified persons that were performed by a civil investigator. The interviews are being withheld under the theory that they constitute attorney-work product.

I would like to respectfully request that my earlier Freedom of Information Act request be reconsidered. I make this request in the spirit of the Clinton Administration's expressed desire to work more closely with business - in particular, the administration's re-affirmed commitment to FOIA. It is my understanding that the administration has asked all government agencies to discontinue their reliance on technical arguments for non-disclosure and to err on the side of disclosure wherever possible.

Given that Ms. Estes readily admits that information such as the civil investigator's interviews and a waste-in list is usually made available at the later stages of the agency's involvement at a site, I fail to see the advantage of withholding it now. It certainly does not encourage my client to cooperate with the U.S. EPA or commit funds to an RI/FS.

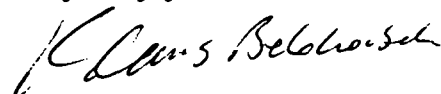
At this time, I have only asked for those portions of the interviews that relate to Matlack's alleged involvement at the Facility. Alternatively, perhaps you would prefer to abstract the information. I simply need a starting point to do my job - to conduct my own investigation. At the very least, provide me with the names, addresses and telephone numbers of the interviewees, the substance of their testimony (including what materials Matlack is alleged to have generated, where it was generated, on what dates, in what quantities, and who allegedly transported it to the Facility) and the basis of their testimony (whether it be documented or based on personal knowledge or hearsay). Clearly, such "facts" cannot be privileged.

Matlack is presently without any knowledge of a connection to this Facility. I have previously set out for you the distinction between transporter liability and generator liability. This is a critical distinction to Matlack. It has been previously linked to sites based simply on the recollection of a dispatcher or janitor that recalls having seen Matlack's distinctive green trailers at or near the site. That may be the extent of the connection in this case. Based on the information you have provided me to date, I think it is fair for me to ask you: If you were advising Matlack, what reasons would you give it to execute the Administrative Consent Order? If you were defending Matlack in a shareholder suit for waste of corporate assets in funding cleanup or investigative activities at the Facility, what would be your defenses?

As you are probably aware, Matlack has expended considerable sums of money at superfund sites across the country and has cooperated extensively with U.S. EPA and other PRPs. Matlack simply needs more information before it can make a commitment at this Facility.

I would appreciate a written response to this letter and ask that you make this letter and my prior correspondences part of the administrative record in this matter. Thank you.

Very truly yours,



Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh

1492



matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

December 23, 1993

TELECOPY AND
CERTIFIED - RETURN
RECEIPT REQUESTED

Tom Barounis,
Remedial Project Manager
U.S. EPA - Region V
Office of Superfund
Minnesota / Ohio Remedial
Response Branch (HSRM-6J)
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")
General Notice of Potential Liability**

Dear Mr. Barounis:

Yesterday afternoon I received your fax relative to a meeting which you scheduled for January 6, 1994 in Chicago. Given the rather short notice, I do not yet know if a Matlack representative will be able to attend. Due to the holiday season, a number of people here are unavailable.

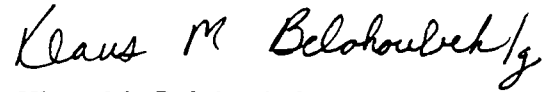
I would like to echo the comments which have been made to you by a number of other PRPs relative to the short time frames set forth in the U.S. EPA's December 1, 1993 letter. If the Facility is not being addressed under the special notice procedures of Section 122 of the Comprehensive Environmental Response Compensation and Liability Act, Matlack would also appreciate clarification on U.S. EPA's departure from the typical one hundred and twenty day negotiation period.

I would also like to draw your attention to my last correspondence to you dated December 17, 1993 in which I once again requested information substantiating Matlack's alleged nexus to the Facility. Given that your December 22, 1993 letter implies that the purpose of the January 6 meeting is to negotiate the draft Administrative Order on Consent and a Statement of Work for Conducting an Engineering Evaluation / Cost Analysis, such a meeting would be

premature from Matlack's standpoint. Matlack is fully prepared to negotiate with U.S. EPA concerning these matters, but only after it has received a satisfactory response to its request for information.

I will be out of the office until January 3, 1994, but hope to discuss this with you further at that time. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Klaus M. Belohoubek".

Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh

1501

Dictated but not read

1

6



ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

January 4, 1994

TELECOPY AND
CERTIFIED - RETURN
RECEIPT REQUESTED

Tom Barounis,
Remedial Project Manager
U.S. EPA - Region V
Office of Superfund
Minnesota / Ohio Remedial
Response Branch (HSRM-6J)
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")
General Notice of Potential Liability**

Dear Mr. Barounis:

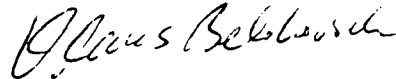
To confirm our conversation yesterday, given that the meeting you have scheduled for January 6 will be limited to a discussion of the AOC and Scope of Work, Matlack has no reason to send a representative. Matlack remains prepared to negotiate these items if and when U.S.EPA responds to Matlack's prior requests for information.

I find absolutely baffling U.S. EPA's contention that Matlack should negotiate an AOC without knowledge of any connection to the Facility. I also fail to comprehend the basis for U.S. EPA's refusal to respond to Matlack's prior FOIA requests. As I pointed out in my last request dated December 17, 1993, even if certain notes and internal memoranda are protected by privilege, the underlying facts simply cannot be. I have yet to receive a satisfactory response to this request or my earlier requests dated December 7, 1993 and August 24, 1993.

I have recently retained outside counsel in this matter and am considering an action to compel compliance with my requests for information. I am afraid that U.S. EPA is turning what should be a cooperative effort into an adversarial one and I ask again that you reconsider before we waste additional resources on a senseless cat and mouse game.

As with my prior correspondence, please make this letter part of the administrative record in this matter. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Klaus Belohoubek".

Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh

1507

cc: PRPs on attached distribution list
Wendy L. Carney
Sherry L. Estes, Esquire

—

7



matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

January 17, 1994

FREEDOM OF INFORMATION ACT APPEAL

FEDERAL EXPRESS

U. S. Environmental Protection Agency
Freedom of Information Officer A-101
401 M Street, Southwest
Washington, DC 20460

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")**

Gentlemen:

Attached please find correspondence relating to previous FOIA requests which have been made in connection with the Facility. Matlack has yet to receive a written response to these requests, but the Office of Regional Counsel has verbally denied the requests as outlined in my letter dated December 17, 1993.

The request remains as set forth in my December 7, 1993 letter: "any and all information which U.S. EPA has suggesting a connection between Matlack and the Facility."

Matlack requests that U.S. EPA produce responsive documents in their entirety, including all attachments, enclosures, and exhibits. In the event that you determine that a document contains material or information which falls within the statutory exemptions to mandatory disclosure, we request that such material or information be reviewed for possible discretionary disclosure. See Chrysler Corp. v. Brown, 441 U.S. 281, 293 (1979). We also request that, in accordance with the provisions of 5 U.S.C. § 552(b), any and all reasonably segregable portions of any otherwise exempt document be produced.

Matlack has agreed to reimburse reasonable and standard fees.

Please consider this letter an appeal from the U.S. EPA's earlier denial of the requested information.

Matlack believes that U.S. EPA's verbal refusal to provide the requested information violates both the spirit and the letter of the Freedom of Information Act. It also fails to even identify or itemize the responsive records as to which the agency has claimed an exemption from disclosure. Unless U.S. EPA finds that the records are not exempt from disclosure, therefore, we request that U.S. EPA provide an itemization and index of the documents so that we can provide further information and argument in support of this appeal. See Mead Data Central, Inc. v. Department of the Air Force, 566 F. 2d 242, 251 (D.C. Cir. 1977).

Matlack expects that U.S. EPA will make a determination on this appeal within the 20-day statutory time limit. See 5 U.S.C. § 552 (a) (6) (A) (ii).

Please feel free to contact me at (302) 426-2806 to discuss this matter. Thank you.

Very truly yours,

Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh

Attachments:

- Letter dated 8/24/93 from Klaus M. Belohoubek to Thomas W. Mateer (with carbon copies to Sherri Estes, Esquire and Thomas Barounis)
- Letter dated 12/7/93 from Klaus M. Belohoubek to Tom Barounis, Wendy L. Carney and Sherry L. Estes, Esquire
- Letter dated 12/17/93 from Klaus M. Belohoubek to Tom Barounis, Wendy L. Carney and Sherry L. Estes, Esquire
- Letter dated 1/4/94 from Klaus M. Belohoubek to Tom Barounis (with carbon copies to Wendy L. Carney, Sherry L. Estes, Esquire and PRPs)

1000

8



matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

January 19, 1994

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Sherry L. Estes, Esquire
Office of Regional Counsel
U.S. EPA - Region V
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")**

Dear Ms. Estes:

Based on the information you have provided me to date, I have investigated Matlack's relationship with Vallet Paint. We simply do not have definitive records which date back to 1951 - I doubt any of the PRPs do. My investigation does, however, suggest that any involvement between these companies was limited to Matlack's purchase of paint and other supplies from Vallet.

I have attached three affidavits from Matlack officials which bear this out. I believe they are self-explanatory. Please make these affidavits and this letter part of the administrative record in this matter.

I have also confirmed with counsel to Vallet Paint, Shane Farolino, Esq., that his client did not handle, transport, store or dispose of any waste materials for Matlack. I believe he will be communicating this to you separately.

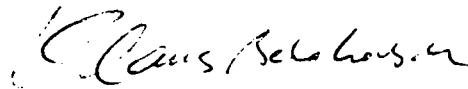
Given that U.S. EPA has not indicated what the nature of the alleged relationship between Matlack and Vallet was, it is difficult for me to be more responsive. There have been no allegations that any particular waste attributable to Matlack, either as a transporter or generator, was sent to the Facility. There have been no allegations setting forth a relevant time period or the names of witnesses, nor have any documents been produced.

Accordingly, I would like to request yet again that you produce evidence of Matlack's alleged connection to this Facility. If no such evidence exists, I would ask that you have Matlack's name deleted from the PRP list.

Due to your prior refusals to provide anything responsive to my requests, I have been compelled to initiate an appeal under FOIA. Enclosed please find a copy of that appeal.

Matlack remains willing to discuss its alleged connection to the Facility at any time. I really see no reason for us to take adversarial positions and would welcome the opportunity to discuss this matter with you further or to cooperate with you in any way. I can be reached at my direct dial of 302/426-2806. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Klaus M. Belohoubek".

Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh

Enclosure

1527

cc: Mr. Thomas Barounis
Ms. Wendy L. Carney
Shane Farolino, Esq.

9



matlack, inc.
pipeline on wheels ®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

March 21, 1994

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Sherry L. Estes, Esquire
Office of Regional Counsel
U.S. EPA - Region V
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")**

Dear Ms. Estes:

This letter is to update my letter to you dated January 19, 1994. Attached to that letter were three affidavits from Matlack officials relating to the relationship you have alleged that Matlack had with Vallet Paint. As I noted in that letter, I had confirmed with counsel to Vallet Paint, Shane Farolino, Esquire, that his client did not handle, transport, store or dispose of any waste materials from Matlack.

Mr. Farolino has informed me that he recently forwarded certain information to you, including several affidavits of former Vallet Paint employees.

In virtually every one of these affidavits, there is a statement similar to the following:

"To the best of my knowledge, information and belief, Vallet Paint neither instructed nor permitted its delivery drivers to pick up waste materials from any of its customers for disposal at the landfill [the Dura Avenue Landfill]. During my employment with Vallet Paint, I never picked up waste materials from any Vallet Paint customer for disposal."

The above was excerpted from the affidavit of Robert Cairns, dated February 16, 1994.

Sherry L. Estes, Esquire

Page 2

March 21, 1994

In light of this information, I would like to request yet again that you produce evidence of Matlack's alleged connection to the Stickney Avenue Landfill or Tyler Street Dump. If no such evidence exists, I would ask that you have Matlack's name deleted from the PRP list.

Please also be advised that I have yet to receive a response to the appeal which I initiated under FOIA.

As with my prior correspondence, please make this letter a copy of the administrative record in this matter. Thank you.

Very truly yours,



Klaus M. Belohoubek
Assistant General Counsel

KMB/gmh

1612

cc: Mr. Thomas Barounis
Ms. Wendy L. Carney
Shane Farolino, Esq.

10



matlack, inc.
pipeline on wheels[®]

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

April 14, 1994

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Sherry L. Estes, Esquire
Office of Regional Counsel
U.S. EPA - Region V
77 W. Jackson Street
Chicago, Illinois 60604-3590

**Re: Stickney Avenue Landfill and
Tyler Street Dump (the "Facility")**

Dear Ms. Estes:

I am in receipt of the proposed Administrative Order on Consent for Engineering Evaluation/Cost Analysis for the above referenced Site which was purportedly mailed by Tom Barounis last month by his letter dated March 4, 1994. The envelope indicates that it was, in fact, mailed more than one month later, on April 6, 1994. It was received by me on April 11, 1994.

I refer you to my prior correspondence to you on this matter. Unless and until U.S. EPA responds to my numerous requests for information concerning this Site, Matlack must decline the invitation from Mr. Barounis to enter into a Consent Order. We would be pleased to reevaluate this position at a later date.

As with my prior correspondence, please make this letter a copy of the administrative record in this matter. Thank you.

Very truly yours,

Klaus M. Belohoubek
Assistant General Counsel

KMB/lal
1643

cc: Thomas Barounis
Wendy L. Carney

—



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 19 1994

OFFICE OF
GENERAL COUNSEL

Mr. Frederick L. Cottrell, III
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

Subject: Matlack Systems, Inc. v. Environmental Protection Agency
(District of Delaware C.A. No. 94-156)

Dear Mr. Cottrell:

This letter is a follow-up to our telephone conversation of May 4, 1994 and today in which we discussed the current status of the Matlack case as well as your letter of April 19, 1994. Your letter was sent subsequent to our initial phone conversation of April 15, 1994.

As we indicated in our conversation on the 4th, at the time of our initial conversation with you, it was our belief that there was only one document in existence responsive to Mr. Belohoubek's Freedom of Information Act (FOIA) request. We indicated the Agency was willing to release the document after redacting the home telephone number of the interviewee and one sentence containing medical information. The redacted information is exempt from disclosure by virtue of FOIA exemption 6, 5 U.S.C. 552(b)(6), because release of the information would cause a clearly unwarranted invasion of the interviewee's personal privacy. The information is also exempt under FOIA exemption 7(C), 5 U.S.C. 552(b)(7)(C). Exemption 7(C) protects information in law enforcement records, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We also indicated that upon receipt of your April 19th letter, we asked the Region to conduct another search to assure that there were no additional responsive documents. This search has now been completed.

During our conversation on May 4, 1994, we advised you that the Region had located 6 additional documents, portions of which contained information responsive to the request. Although these portions of documents consist largely of information duplicative

of that in the interview document, they are nevertheless responsive to your client's request. We indicated the Agency would be willing to disclose the responsive portions of these documents as well.

We are enclosing copies of the responsive releasable information for your review. We are also enclosing an index of the responsive documents located to date. Although, arguably, the information being released to you may be exempt from disclosure as deliberative process or attorney work-product information under Exemption 5 of the FOIA, it is being released to you in the Agency's discretion in an attempt to resolve this matter. Where information has been redacted pursuant to a FOIA exemption, the exemption is indicated. We have also indicated on the documents where portions of the document have been removed as being non-responsive. As we discussed, your client's request sought "any and all information which U.S. EPA has suggesting a connection between Matlack and the Facility." (In the requests, "facility" was explicitly described as the Stickney Avenue Landfill and Tyler Street Dump site.) Accordingly, only those portions of files searched and documents located which pertain directly to the subject of the request are considered within the scope of the request.

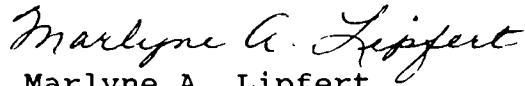
As we indicated in our phone conversation today, upon further review of Document No. 7, which constitutes Vallet Paint Service Company's 104(e) response regarding the Stickney-Tyler site, the document does not appear to be responsive to your request. Nevertheless, the document is being released to you as it contains information linking Matlack to another site which was incorporated by reference into the response concerning the Stickney-Tyler site.

Finally, in your April 19 letter, you requested assurance that the statement about the health of the interviewee does not relate to any possible claim against Matlack. As we indicated in our conversation, the substance of the sentence does not reveal any such relationship. Similarly, you sought information concerning the name, title, occupation and address of the interviewer and interviewee. The identity of the interviewer has been redacted. This information is exempt from disclosure by virtue of FOIA exemption 7(C), 5 U.S.C. 552(b)(7)(C). To the extent that the remaining information concerning the title, occupation and address of the interviewer and interviewee does not appear on the records at issue, the Agency would not be required to provide it to you under the FOIA. FOIA does not require an agency to create a record to respond to a request. If such information does appear and it has been determined to be exempt under the FOIA, such exemption will appear on the attached index.

We appreciate your patience and cooperation in attempting to resolve this matter and look forward to hearing from you after you have had a chance to review the enclosed information.

Sincerely,


Alan D. Margolis


Marlyne A. Lipfert
Information Law Branch

Enclosures

cc: Patricia Hannigan, AUSA

INDEX OF DOCUMENTS

1. Typewritten notes recording interview with Larry Sherwin on October 27, 1993 with handwritten notes and chronology of attempts to reach interviewee. The interviewee's home telephone number (in both the typewritten and handwritten chronology) and one sentence containing medical information are exempt under FOIA Exemptions 6 and 7(C).
2. Portion of the trip report of the investigator. Non-responsive portions of this document have been removed. The interviewee's home telephone number and one sentence containing medical information are exempt under FOIA Exemptions 6 and 7(C).
3. Stickney/Tyler available PRP information compiled from 104(e) responses and investigatory notes prepared by the Remedial Project Manager. (7 pages) Non-responsive portions of this document have been removed.
4. Stickney/Tyler available PRP information compiled from investigatory notes prepared by the Remedial Project Manager. The interviewer's name is exempt pursuant to FOIA Exemption 7(C). (5 pages) Non-responsive portions of this document have been removed.
5. Compilation of Stickney/Tyler 104(E) Responses prepared by a clerk in the Responsible Party Unit at the direction of an attorney with handwritten annotation by Regional Counsel attorney. (35 pages) Non-responsive portions of this document have been removed.
6. Stickney/Tyler PRP Evidence Cross-Reference prepared by a clerk in the Responsible Party Unit at the direction of an attorney. (14 pages) Non-responsive portions of this document have been removed.
7. Vallet Paint Service Company 104(e) response to Request for Information for the Stickney Avenue Landfill and Tyler Street Dump Sites incorporating response to Request for Information concerning the Dura landfill. Certain information that has been claimed business confidential is being withheld pursuant to Exemption 4 of the FOIA.

— 12 —



matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

June 14, 1994

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Sherry L. Estes, Esquire
Office of Regional Counsel
U.S. EPA - Region V
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Site")**

Dear Ms. Estes:

Based on the information which U.S. EPA has now provided to Matlack in response to my earlier FOIA requests, it is now clear that Matlack's connection to the Stickney Avenue Landfill and Tyler Street Dump (the "Site") is based solely on a single telephone interview of Larry Sherwin, a former employee of Vallet Paint.

I have contacted Mr. Sherwin and interviewed him at length. He has confirmed that Matlack was a customer of Vallet Paint. This is something we already knew. He has also confirmed that Vallet Paint did not dispose of any waste materials for Matlack.

As I noted in my letter to you dated January 19, 1994, Matlack's investigation into this matter has concluded that the only involvement between Matlack and Vallet Paint related to Matlack's occasional purchase of paint and other supplies from Vallet. I also provided three affidavits from Matlack officials which bear this out.

In my letter to you dated March 21, 1994, I referred you to the affidavits recently sent to you by counsel to Vallet Paint, Shane Farolino, Esquire. Mr. Farolino has confirmed that Vallet Paint did not dispose of any waste materials for Matlack. The affidavits which Mr. Farolino provided to you bear this out.

Sherry L. Estes, Esquire
Page 2
June 14, 1994

The affidavit which Larry Sherwin provided to the City of Toledo does not indicate any connection between Matlack and the Site.

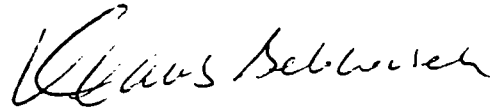
The only connection between Matlack and the Site that exists is in one paragraph of notes relating to the interview of Larry Sherwin (name of interviewer not disclosed) in which the interviewer states as follows: "Waste from Matlack Co. on east side of Toledo would be picked up and brought to dump. Matlock [sic] was a customer of Vallet. Dumped to Stickney and Tyler."

I read these interview notes to Mr. Sherwin. He stated to me that he never made that statement to anyone from U.S. EPA or the City of Toledo. Attached please find an affidavit which Mr. Sherwin signed after speaking with me. The affidavit confirms that Mr. Sherwin did not take any waste materials from Matlack to the Site.

Based on the foregoing, I would request that you have Matlack dropped as a PRP at the Site. I would appreciate it if you would review the attached affidavit and the prior information which I have provided to you in this matter and then call me to discuss this further. We also need to discuss the ultimate resolution of the FOIA appeal which Matlack filed in federal court.

As with my prior correspondence, please make this letter a part of the administrative record in this case. Thank you.

Very truly yours,



Klaus M. Belohoubek
Vice President - General Counsel

KMB/gmh

Enclosure

1722

cc: Mr. Thomas Barounis
Ms. Wendy L. Carney
Shane Farolino, Esq.

AFFIDAVIT

I, LARRY SHERWIN, do certify as follows:

1. I worked as a driver for Vallet Paint Company ("Vallet Paint"), located on Adams Street between the years of 1963 to 1965 and again between the years of 1968 to 1970.

2. Matlack, Inc. ("Matlack") was a customer of Vallet Paint. Matlack was one of many customers of Vallet Paint for whom I handled deliveries. On occasion, I would deliver cans of paint to customers of Vallet Paint, including Matlack. On occasion, I would also deliver sixteen (16) gallon or fifty-five (55) gallon drums to customers of Vallet Paint, including Matlack. I am not sure what the drums contained, but believe that they contained some form of solvent. I do not recall how often I made deliveries to Matlack, nor do I recall with any specificity, what I delivered to Matlack.

3. In connection with my deliveries to various customers, I would on occasion pick up empty drums from those customers. On occasion, there would be some residue of material left in these drums. As the drums were sealed, I have no way of knowing what the residue might have been. I believe that on occasion I picked up empty drums from Matlack. I do not recall how often this would have occurred or whether there was any residue in any of these drums.

4. Any drums picked up from customers, including Matlack, were returned directly to Vallet Paint. I did not take drums or any other materials from Matlack to the Stickney Avenue Landfill or Tyler Street Dump. I did not take drums or any other materials from Matlack to the Dura Avenue Landfill.

5. As part of my duties, I would ultimately take Vallet Paint trash to various dumps in the area. I have no way of knowing if any drums collected from Matlack or any other customer went to any particular dump or site, or whether such drums had any residue in them.

Executed this 8 day of June, 1994, in Toledo, Ohio.

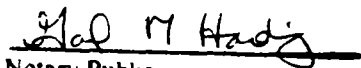
I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.


Larry Sherwin

Sworn to and subscribed before

me this 8th day of

June A.D. 1994


Notary Public



U.S. Department of Justice

United States Attorney's Office
District of Delaware

Chemical Bank Plaza
1201 Market Street, Suite 1100
P.O. Box 2046
Wilmington, Delaware 19899-2046

302/573-6277

July 15, 1994

Sandra Stanbery Sawyer, Esquire
Baker, Worthington, Crossley
& Stansberry
Riverview Tower
P.O. Box 1792
Knoxville, Tennessee 37901

Re: Matlack, Inc. v. United States
Environmental Protection Agency
Civil Action No. 94-156-JLL (D.Del.)

Dear Ms. Stanbery:

I write in response to your letter of June 29, 1994 to Ms. Lipfert, asking why your client Matlack, Inc. ("Matlack") has been named a potentially responsible party ("PRP") at the Stickney-Tyler landfill site in Toledo, Ohio, and questioning the good faith of the Environmental Protection Agency ("EPA") in so naming it.

EPA sent a "104(e) letter" to Matlack because it was on the mailing list of PRPs from the adjacent Dura site. As you know, statutory authority permits us to require anyone who has, or may have, relevant information to furnish it to EPA. Given the overlap between parties who used the adjacent sites, EPA reasonably believed that Matlack -- a PRP at Dura -- might have relevant information regarding Stickney-Tyler. We would be happy to provide you with a copy of the mailing list from the Dura site if you wish. We are not withholding this document; EPA simply didn't think it was responsive to Mr. Belohoubek's request.

The "general notice" letter was sent to Matlack based on EPA's investigation, including its interview of Mr. Sherman. All documents relevant to that investigation that are responsive to your client's FOIA request have been provided to you. The information that was redacted from the documents is exempt from mandatory disclosure by virtue of FOIA exemptions 4, 6 and 7(C), 5 U.S.C. § 552(b)(4), (6) and (7)(C). Indeed, in an attempt to settle this litigation, EPA has released to your client, in its discretion, information that arguably could have been withheld under exception 5 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(5). Thus, my client's disclosure goes beyond that required.

Sandra Stanbery Sawyer, Esquire
July 15, 1994
Page 2

In summary, I repeat: I have been assured that EPA has produced all documents in its care, custody and control that are responsive to Mr. Belohoubek's request. After a thorough search, EPA has concluded that there simply are no additional responsive documents.

I trust this explanation satisfies your queries regarding how Matlack was named. I trust further that you will agree with me that this history does not demonstrate bad faith.

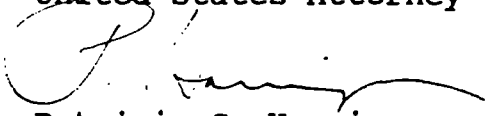
Regarding your request that Matlack be removed from the list of "potentially" responsible parties, we do not feel that would be appropriate since EPA's investigation at the Stickney-Tyler site is continuing. On the other hand, it is possible, depending upon the results of EPA's continuing investigation, including EPA's consideration of the Sherman affidavit recently provided by your client, that a "special notice" letter to your client will not be forthcoming.

Under the circumstances outlined above, I hope you will agree that there is clearly no support for your request that EPA pay your client's attorney's fees. Indeed, we are hopeful that your client will be persuaded that there is no basis for its FOIA claim, that there is no relief that the Court can grant it, and that this matter can finally be laid to rest in the near future.

I understand you have tried to reach Ms. Lipfert and myself by telephone; although I will be out of the office all next week, we would be glad to schedule a teleconference upon my return to discuss this matter.

Very truly yours,

GREGORY M. SLEET
United States Attorney

BY: 
Patricia C. Hannigan
Assistant United States Attorney

PCH:vpd

cc: ✓ Frederick L. Cottrell, III, Esquire
Sherri Estes, Esquire
Marlyne Lipfert
Alan Margolis, Esquire



matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

August 3, 1994

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Sherry L. Estes, Esquire
Office of Regional Counsel
U.S. EPA - Region V
77 W. Jackson Street
Chicago, Illinois 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Site")**

Dear Ms. Estes:

In my last correspondence to you regarding the above referenced site, I requested that you drop Matlack as a PRP based on the information which has been provided to you to date. I have attached an additional copy of this letter for your convenience. Please be good enough to provide me with a response to this letter at your earliest convenience. Thank you.

Very truly yours,

Klaus M. Belohoubek
Vice President - General Counsel

KMB/gmh
Attachment
1778

cc: Mr. Thomas Barounis
Ms. Wendy L. Carney
Shane Farolino, Esq.

15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MATLACK, INC., a Pennsylvania)
corporation qualified to do)
business in Delaware,)

Plaintiff,)

v.)

Civil Action No. 94-156-JLL

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY, an agency of)
the United States Government,)

Defendant.)

Allen M. Terrell, Jr., Frederick L. Cottrell III, and Francis DiGiovanni of Richards, Layton & Finger, Wilmington, DE, and Baker, Worthington, Crossley, Stansberry & Woolf, Knoxville, TN, of counsel, for plaintiff.

Gregory M. Sleet, United States Attorney, and Patricia C. Hannigan, Assistant United States Attorney, Wilmington, DE, and Alan D. Margolis, Office of General Counsel, Washington, DC, and Sherry L. Estes, Office of Regional Counsel, Region V, Chicago, IL, for defendant.

O P I N I O N

Wilmington, Delaware
November 15, 1994.

Latchum
LATCHUM, Senior District Judge.

I. Procedural History

On August 12, 1993, the plaintiff, Matlack, Inc. ("Matlack"), through its Vice President - General Counsel, Klaus M. Belohoubek, received from the Environmental Protection Agency ("EPA"), a Request for Information ("EPA Request") pursuant to section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767 (codified as amended in scattered sections of 42 U.S.C.). The EPA Request sought any information from Matlack pertaining to a landfill site known as the Stickney Avenue Landfill and the Tyler Street Dump in Toledo, Ohio (the "Site"). Matlack, having no record of its involvement at the Site, on August 24, 1993, sent the EPA a request for any documents linking Matlack to the Site. Matlack alleges, and the EPA does not dispute, that there was no response to the first request. On September 3, 1994, Matlack responded to the EPA Request. On December 1, 1993, the EPA sent a proposed Administrative Order on Consent seeking an indication from Matlack of its willingness to perform, or reimburse the EPA with respect to certain activities proposed at the Site. Matlack was also named a potentially responsible party ("PRP"). On December 7, 1993, Matlack sent a second request to the EPA pursuant to the Freedom of

Information Act ("FOIA"), 5 U.S.C. § 552 (1988), for the requested documents. Shortly after sending the second request, Matlack received a phone call from Ms. Sherry L. Estes, the Regional Counsel for the EPA. At that time, Ms. Estes informed Matlack that it had no documents linking Matlack to the Site except for one transcribed interview and that the EPA was withholding the document on attorney work-product grounds. In response to that phone call, on December 17, 1993, Matlack, sent a third request to the EPA under FOIA in which it sought, *inter alia*, a copy of the purported interview. Having received no response to its latest request, Matlack, on January 17, 1994, filed an administrative appeal with the EPA pursuant to 40 C.F.R. § 2.114(a) (1993) contesting the EPA's refusal to provide the requested information. On January 19, 1994, the EPA received the appeal. On February 15, 1994 Matlack received a written response to its last request.¹ This response was not within the 20 day time limit set by statute, 5 U.S.C. § 552(a) (6) (A) (ii), and regulation, 40 C.F.R. § 2.117(a) (1993). As

¹ The body of the letter reads as follows:

This letter is to acknowledge receipt of your appeal. We have a large docket of Freedom of Information Act appeals and are working as quickly as possible to resolve them. These appeals are being handled on a first-come, first-served basis. Due to our caseload, I am unable to predict when a decision will be issued on your appeals [sic], but it will be as soon as possible.

Docket Item ("D.I.") 11, Ex. A.

a result of the EPA's failure to comply with the time limits imposed, Matlack is deemed to have exhausted its administrative remedies. 5 U.S.C. § 552(a)(6)(C).

After waiting nearly an additional six weeks without word from the EPA, Matlack on March 25, 1994, brought this suit, pursuant to the FOIA, seeking disclosure of various documents that the EPA had in its files allegedly linking Matlack to the Site. On April 15, 1994, the EPA telephoned Matlack and indicated that there was one document responsive to their request and that it was exempt from disclosure, but that the EPA was considering a discretionary release. On May 4, 1994, the EPA again telephoned Matlack. This time the EPA indicated that there were six additional documents responsive to Matlack's request and maintained its representation that all the relevant documents were exempt from disclosure but would possibly be released on a discretionary basis. On May 19, 1994, the documents were indeed released, albeit with some redactions. Matlack, satisfied with the documents in their redacted form, no longer seeks a court order mandating further disclosure. (D.I. 6 at 5.) Matlack, however, subsequently filed a motion for attorney's fees and other litigation costs ("attorney's fees") pursuant to 5 U.S.C. 552(a)(4)(E).² This Court

² In view of Matlack's position, the complaint will be dismissed and this Opinion will be directed only to the question of whether
(continued...)

will now discuss the merits of this motion.

II. Discussion

In order to determine whether to award attorney's fees this court must engage in a two-pronged inquiry. First, is the plaintiff eligible for attorney's fees? This decision is controlled by whether the plaintiff has "substantially prevailed" in the instant action within the meaning of 5 U.S.C. § 552(a)(4)(E). If the plaintiff has substantially prevailed then the court proceeds to the second prong of the inquiry: if eligible, is the plaintiff entitled to attorney's fees? The decision on this prong is ultimately left up to this Court's equitable discretion, but is guided by the Court's analysis of four factors: (1) the public benefit derived from the case; (2) the commercial benefit to the complainant; (3) the nature of the complainant's interest in the records sought; and (4) whether the government's withholding had a reasonable basis in law. Tax

(...continued)
to award attorney's fees.

The FOIA attorney's fees provision reads:

The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

5 U.S.C. § 552(a)(4)(E).

Analysts v. United States Dep't of Justice, 965 F.2d 1092, 1093 (D.C. Cir. 1992). These four factors are designed to guide the court but are not exhaustive of the factors a court may consider. The United States Court of Appeals for the District of Columbia Circuit has long been on the leading edge of interpreting the parameters of what a federal agency must disclose and may withhold consistent with the terms of FOIA.³ As a result, the parties and this Court primarily rely on authority from that Circuit.

A. Eligibility For Attorney's Fees

In order to be eligible for attorney's fees a plaintiff must have "substantially prevailed" within the meaning of 5 U.S.C. § 552(a)(4)(E). It is not necessary to obtain a court order mandating disclosure in order to substantially prevail; however, the party seeking such fees in the absence of a court order must show (1) that the action could reasonably be regarded as necessary to obtain the information, and (2) that a causal nexus exists

³ This is due, in large part, to the venue provisions of the FOIA providing that a plaintiff may always file the action in the District of Columbia:

On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction

5 U.S.C. § 552(a)(4)(B).

between that action and the agency's surrender of the information. *Church of Scientology of California v. Harris*, 653 F.2d 584, 588 (D.C. Cir. 1981). Therefore, it is clear that a mere filing of a suit followed by disclosure is not dispositive of the issue. *Frye v. EPA*, 1992 WL 237370, at *2 (D.D.C. 1992) (quoting *Weisburg v. U.S. Dep't of Justice*, 745 F.2d 1476, 1496 (D.C. Cir. 1984)). An analysis of the facts before this Court, however, compels the conclusion that Matlack did substantially prevail in this action. First, the "reasonable necessity" of a lawsuit is determined from the perspective of a reasonable person in the position of the requester. *Chesapeake Bay Foundation, Inc. v. U.S. Dep't of Agriculture*, 11 F.3d 211, 216 (D.C. Cir. 1993), cert. denied, 115 S.Ct. 315 (1994) (citing *Fund for Constitutional Gov't v. Nat'l Archives & Records Service*, 656 F.2d 856, 872 (D.C. Cir. 1981)). Here, Matlack filed three requests for information. In each instance the requests were either inexplicably ignored or handled in a way that violated regulations, with the net result that no disclosure was forthcoming. Upon filing an appeal, Matlack was told in effect, "we have received your appeal; we don't know when we will be able to resolve it." After waiting five and one half weeks with no further communication from EPA, in the face of statutory and regulatory mandates to respond within 20 days, Matlack believed, and indeed any reasonable person in Matlack's

position would have believed, that a suit was necessary to compel disclosure. Second, the causal nexus required must be such that the litigation "substantially caused" the release of the documents, *Chesapeake Bay Foundation, Inc.*, 11 F.3d at 216. This Court finds that the instant action substantially caused the release of the documents. The EPA, in response to Matlack's appeal merely stated that "due to our caseload, [we] are unable to predict when a decision will be made on your appeal . . . ," (D.I. 11, Ex. A). At oral argument, the EPA suggested that a "simple telephone call" would have resolved the situation. This Court is unconvinced. While this Court expresses no opinion on whether the documents might have eventually been released absent this litigation, "the mere fact that a FOIA requester might have ultimately received the documents in question in the absence of litigation is not a sufficient basis for a finding that it has not substantially prevailed for purposes of an award of attorney fees." *Fund for Constitutional Gov't* , 656 F.2d at 871. Based on the present record, this Court concludes that the release of the relevant documents was substantially caused by the instant action. This is not a situation where the plaintiff has unreasonably rushed to litigation in an effort to secure preferential treatment. *Id.* Because this Court has found that the Matlack's action was reasonably necessary and substantially caused the release of the

documents, this Court further finds that the plaintiff "substantially prevailed" in this action, and is therefore eligible for attorney's fees.

B. Entitlement To Attorney's Fees

A determination by this Court that the plaintiff is eligible for attorney's fees does not imply that attorney's fees will be awarded automatically. Rather this Court must now engage in a balancing of the four factors relevant to the second prong of the attorney's fees inquiry, in order to guide its equitable discretion as to whether to award attorney's fees.

i. The Public Benefit Derived From The Case

In *Blue v. Bureau of Prisons*, 570 F.2d 529, 533 (5th Cir. 1978), it was stated:

With respect to the first of these considerations--"the benefit to the public deriving from the case"--it is doubtless true, as the D.C. Circuit has suggested, that the successful FOIA plaintiff always acts in some degree for the benefit of the public, both by bringing government into compliance with the FOIA disclosure policy and by securing for the public at large "the benefits assumed to flow from the public disclosure of government information." *Cuneo v. Rumsfeld*, 553 F.2d 1360, 1367 (1977). Yet the Senate Report's discussion of this criterion referred repeatedly to disclosure to the press and to public interest organizations, thus strongly suggesting that in weighing this factor a court should take into account the degree of dissemination and likely public impact that might be expected from a particular disclosure. S.Rep.No. 854, 93d Cong., 2d Sess. 19 (1974). This goes to the central purpose of the disclosure act: to assist our citizenry in making the informed choices so

vital to "the maintenance of a popular form of government." *Id.* at 2.⁴

In this case Matlack argues that it is in the public interest that all PRPs be given access to documents linking them to clean-up sites, in order to rapidly determine whether to participate in the clean-up, thereby potentially speeding up the clean-up process. The EPA argues that the documents in this case were only relevant to Matlack's activities at the Site, and contributed minimally to the public fund of information. While it is true that there is some public benefit derived from every successful FOIA litigant and indeed the public benefits from a rapid clean-up of toxic sites as opposed to long delays caused by litigation such as this, there does not appear in this case to be the kind of public dissemination of information or public impact from the release of this information that Congress envisioned as creating a public benefit. Therefore, as to this factor, the balance tips towards a denial of an award of attorney's fees.

**ii. *The Commercial Benefit To The Complainant And
The Nature Of Plaintiff's Interest.***

The second and third factors are closely related and are often considered together, this Court will follow this trend. See *Tax*

⁴ The 5th Circuit's reasoning was promptly adopted by the District of Columbia Court of Appeals in *Fenster v. Brown*, 617 F.2d 740, 744 (1979).

Analysts, 965 F.2d at 1095. In *Tax Analysts*, the District of Columbia Court of Appeals, affirming the district court's analysis of these two factors, stated that:

The district court found that *Tax Analysts* had a motive to bring its FOIA lawsuit independent of the attorney's fees incentive and that the second and third criteria therefore militated against an award of fees. "[I]t is evident," the district court said, "that plaintiff was not motivated by simply altruistic instincts" The district court noted that the motive to obtain the documents might not have been strictly commercial . . . but to suffice under that second and third factors, a motive need not be strictly commercial; any private interest will do. . . . [T]he district court concluded that *Tax Analysts* had sufficient private incentive to seek disclosure of the documents and that therefore, an award of attorney's fees was not necessary to promote FOIA litigation of the sort *Tax Analysts* pursued.

Id. at 1095. Similarly, here Matlack's underlying incentive to engage in this FOIA litigation was to evaluate the possibility of avoiding liability for the clean-up of the Site. While Matlack certainly did not have a commercial interest in the sense of soliciting business with the information obtained, its private interest in fighting its designation as a PRP and the resulting liability was a sufficient incentive to institute this FOIA litigation regardless of the attorney's fees provision. Therefore, these two factors taken together also point toward a denial of attorney's fees.

iii. The Government's Withholding Did Not Have A Reasonable Basis In Law.

The fourth factor calls for the Court to analyze the government's basis for withholding the documents. If the government's position in withholding the documents was correct, that is dispositive and fees will not be awarded. *Chesapeake Bay Foundation, Inc.*, 11 F.3d at 216. If the government had a "colorable basis in law" to withhold the documents then this factor is weighed along with all the other factors. *Id.* However, if the government has engaged in obdurate behavior then an award of fees can be appropriate even if other factors weigh against it.

Initially, the government through its regional officer, Ms. Estes, asserted that the document in question,⁵ was exempt from disclosure under both exemption 5 and exemption 7, 5 U.S.C. § 552(b)(5), (7).⁶ After the instigation of litigation and the

⁵ At this stage in the administrative procedures only one document had been identified.

⁶ 5 U.S.C. § 552(b) enumerates nine separate exemptions from the requirements of the FOIA:

Exemption 5 reads:

inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

5 U.S.C. § 552(b)(5).

(continued...)

discovery of six additional documents, the government now takes the position that all the documents, although voluntarily released, are exempt from mandatory disclosure as "investigatory records," (D.I. 11, p. 11), presumably under exemption 7. After reviewing the documents at issue in this case, attached as redacted to the affidavit of Mr. Frederick L. Cottrell, III, (D.I. 8, Ex. B), consisting of an index of the seven documents and the documents themselves, this Court concludes that the EPA had no "colorable basis in law" to withhold these documents as they are clearly not covered by exemptions 5 and 7 in light of the final sentence of § 552(b). A review of the documents themselves reveals that any arguably exempt portion of the documents was "reasonably

(...continued)

Exemption 7, in relevant part, reads:

investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (A) interfere with enforcement proceedings, ... (C) constitute an unwarranted personal invasion, . . . (D) disclose the identity of a confidential source . . . , (E) disclose investigative techniques and procedures . . . ;

5 U.S.C. § 552(b)(7).

After listing the nine exemptions, § 552(b) states in its final sentence:

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

segregable."

In defending its actions the EPA, in addition to alleging that the documents were exempt from disclosure, cites *Simon v. United States*, 587 F. Supp. 1029, 1032 (D.D.C. 1984), for the proposition that "while an agency's failure to meet deadlines is not to be condoned, it does not warrant an award of fees in and of itself. Here, without evidence of bad faith, the court declines to impose a fee award to sanction sluggish agency response." *Simon*, however, involved a situation where there was never any withholding of documents; the government never refused to release documents nor asserted a frivolous legal defense to plaintiff's action. *Id.* at 1032. The EPA also cites *Open America v. Watergate Special Prosecution Forces*, 547 F.2d 605, 616 (D.C. Cir. 1976), for the proposition that "[t]he good faith effort and due diligence of the agency to comply with all lawful demands under the Freedom of Information Act in as short a time as is possible by assigning all requests on a first-in, first-out basis, except those where exceptional need or urgency is shown, is compliance with the Act." Indeed as is indicated by the letter from the EPA, (D.I. 11, Ex. A), the EPA does assign FOIA requests on a first-in, first-out basis. However, the court stated this proposition after

determining that "exceptional circumstances" existed pursuant to § 552(a)(6)(C).⁷ In this case the EPA has not provided the Court with any evidence that exceptional circumstances exist. Instead, the EPA relies on its defense that the documents are exempt from mandatory disclosure and not that it needed a longer time period to complete Matlack's request. The EPA's failure to assert this defense, coupled with its bald assertion in its letter, (D.I. 11, Ex. A), to Matlack that "[w]e have a large docket of Freedom of Information Act appeals and are working as quickly as possible to resolve them," without more, is simply insufficient to demonstrate "exceptional circumstances" within the meaning of § 552(a)(6)(C). Cf. *Open America*, 547 F.2d at 610-12 (uncontroverted FBI affidavit demonstrated exceptional circumstances were present). The EPA's attempt to justify its delay is dilatory and insufficient.

This Court therefore finds that the EPA's withholding of the documents was without a reasonable basis in law and that the EPA's

⁷ § 552(a)(6)(C) reads:

Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records.

delay was not justified. Remaining now to be decided is whether to award attorney's fees.

C. *Award of Attorney's Fees Is Left To Equitable Discretion of Court*

While this Court is directed to weigh the above four factors, the sifting of those factors over the facts of the case is a matter of district court discretion. *Tax Analysts*, 965 F.2d at 1094. The first factor, and the second and third factors taken together, weigh against an award of attorney's fees. The fourth factor weighs in favor of an award of attorney's fees. This Court in its discretion finding that the factors are equally balanced will enter an order denying the award of attorney's fees. This action is not to be taken as condoning the EPA's delays and assertion of exemptions without merit.

III. *Conclusion*

For the reasons set forth above this Court will deny Matlack's motion for attorney's fees. A judgement will be entered forthwith in accordance with this opinion.⁸

⁸ The EPA filed a motion for leave to file a sur-reply brief and attached the sur-reply brief itself. Matlack in return filed a motion for leave to file a reply to the EPA's sur-reply brief and attached its reply. The parties did not address these motions in their oral argument, and the Court having rendered its decision after considering the sur-reply brief and response thereto now finds these motions to be moot.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

December 27, 1994

Klaus M. Belohoubek
Vice President--General Counsel
Matlack, Inc.
One Rollins Plaza
P.O. Box 8789
Wilmington, DE 19899

Re: Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")

Dear Mr. Belohoubek:

This letter is in response to your letters of June 14, 1994 and August 3, 1994, in which you requested that U.S. EPA drop Matlack, Inc. as a PRP at the Sites on the basis on information provided to date.

While U.S. EPA will certainly take into account any alleged inconsistencies in Mr. Sherman's statements before issuing any mandatory orders to Matlack to become involved in any Site cleanups, U.S. EPA regrets that it will not be able to honor your request to have Matlack removed from the Stickney/Tyler PRP list. Because our PRP investigations are always on-going, and because the Agency expects to be involved at the Sites for an extended period of time, it would be very resource-intensive for U.S. EPA to investigate, at any given point in time, the evidence with regard to one of many PRPs that may have been implicated at the Sites, to determine whether at that "snapshot" time, there is sufficient evidence to warrant a particular entity's listing as one of the potentially responsible parties at the Site.

I spelled out potentially responsible parties intentionally, because I wanted you to focus on just what the Agency has done in naming Matlack as a PRP. Matlack's inclusion on the PRP list means only that the Agency has found that there is some evidence that Matlack might be liable at the Sites, not that we now have sufficient evidence to issue to Matlack a unilateral administrative order, or to meet the standards of the Federal Rules of Civil Procedure and file a cost recovery lawsuit against Matlack under § 107 of Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA).

Klaus M. Belohoubek
Matlack, Inc.

December 27, 1994

Page - 2 -

Region V practice is to notify PRPs of their potential involvement as early as practicable in the PRP search process. That way, they can monitor the progress of the administrative procedure, and assess their position vis-a-vis the Agency. Most entities, although obviously not Matlack, appreciate the opportunity to get somewhat of a "heads-up" on Agency plans. However, Region V will not change its practice because of the objections of one PRP.

I hope that this letter explains something to you about Region V procedures regarding PRP lists. Although you may not agree with the substance of the decision, I hope that you will agree that Region V's practice is a reasonable means of meeting the Agency's statutory goals under CERCLA.

Sincerely,

A handwritten signature in cursive script that reads "Sherry L. Estes".

Sherry L. Estes
Assistant Regional Counsel

cc: Beth Reiner
Tom Barounis
Marsha Adams
Alan Margolis, OGC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

April 13, 1995

Ms. Jane Montgomery, Esq.
Schiff Hardin & Waite
7200 Sears Tower
233 S. Wacker Drive
Chicago, IL 60606

Subject: Stickney and Tyler Landfills
PRP Search

Dear Ms. Montgomery:

As you requested, I am writing to advise you of the status of U.S. EPA's Potentially Responsible Party (PRP) Search for the Stickney and Tyler Landfill Sites in Toledo, Ohio.

The U.S. EPA believes it currently has enough information regarding generation or transportation of hazardous substances to the Stickney and/or Tyler Landfill Sites to invite the following entities to participate in negotiations for the Remedial Design/Remedial Action (RD/RA) under Special Notice procedures for the Stickney and Tyler Sites: Chrysler Corp.; Du Pont; Dana Corp.; GenCorp, Inc.; Allied Signal, Inc.; Toledo Edison Co.; Cooper Ind.; Owens-IL; Toledo Blade Co.; NL Industries; U.S. Reduction; Gulf Oil Co.; Sun Refining and Marketing Co.; AP Parts; DeVilbiss Co.; City of Toledo; Ron, Linn & Mark Gorney; and Bendix Autolite.

Beyond the entities listed above, U.S. EPA is continuing its PRP search efforts for the two sites. We have identified nine other entities which we believe may have generated or transported hazardous substances to the sites and therefore may be PRPs. These entities are: Kaiser Aluminum; Teledyne (formerly known as American Propeller); Browning-Ferris Industries of Ohio and Michigan (BFIOM); Waste Management Inc. (WMI); Matlack Co.; Dura; Inmont or BASF; United Technologies Automotive and Vallet Paint Service. We would consider any additional information you are able to provide regarding these entities.

If you have any questions regarding this matter please contact me
at (312) 353-1027.

Sincerely,

Beth Reiner

Elizabeth Reiner
Assistant Regional Counsel

cc: Tom Barounis, RPM
Marsha Adams, PRP Search

File: prpsearc.st





matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

May 19, 1995

**CERTIFIED - RETURN
RECEIPT REQUESTED**

Elizabeth Reiner, Esquire
Assistant Regional Counsel
United States Environmental
Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

**RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")**

Dear Ms. Reiner:

I am in receipt of a copy of your letter dated April 13, 1995 addressed to Jane Montgomery at Schiff, Hardin & Waite.

In that letter, you state as follows: "We have identified nine other entities which we believe may have generated or transported hazardous substances to the sites and therefore may be PRPs." Matlack, Inc. is listed as one of these entities.

I would appreciate if you could confirm two things for me. First, is Matlack a PRP at these Sites? Second, has U.S. EPA identified any additional information that in any way suggests that Matlack has a connection to these Sites. By "additional" information, I mean information beyond what was provided in response to the suit Matlack brought in federal district court last year to compel U.S. EPA to respond to numerous FOIA requests made by Matlack.

Please be good enough to treat this letter as a FOIA request and forward it to the appropriate FOIA official at U.S. EPA. Thank you.

Very truly yours,

Klaus M. Belohoubek
Vice President - General Counsel

KMB/gmh

1873

FRANK T. PIZZA
RALPH BRAGG
JAMES R. JEFFERY
NORMAN J. RUBINOFF
B. GARY McBRIDE
DAVID G. WISE
THEODORE M. ROWEN
WARD SUMMERVILLE
GARY D. SICKEMA
MICHAEL J. BEREBITSKY
TRUMAN A. GREENWOOD
CHERYL F. WOLFF
RICHARD E. WOLFF
JAMES M. SCIARINI
BYRON S. CHOKA
JAMES C. ANDERSON
SUSAN B. NELSON
LISA E. PIZZA

SPENGLER NATHANSON

ATTORNEYS AT LAW

608 MADISON AVENUE, SUITE 1000
TOLEDO, OHIO 43604-1169

—
(419) 241-2201

FACSIMILE
(419) 241-8599

WRITER'S DIRECT DIAL NUMBER

(419) 252-6289

JOAN C. SZUBERLA
MICHAEL S. KATZ
TERESA L. GRIGSBY
MICHAEL W. BRAGG
PETER N. KANIOS
RENISA A. DORNER
THOMAS A. LUPICA
SHANE A. FAROLINO

—
OF COUNSEL
JOEL A. LEVINE

—
JOSEPH S. HEYMAN
BENJAMIN B. DURFEE
ANDREW E. ANDERSON
RICHARD A. ENTENMANN
LOUIS J. HATTNER

June 1, 1995

Sherri Estes, Esq.
U.S. EPA - Region V
Office of Regional Counsel (CS-3T)
77 West Jackson Blvd.
Chicago, IL 60604

Re: Vallet Paint Service Company
Supplemental Request To Be Removed From The PRP
List Regarding The Stickney Avenue Landfill and
Tyler Street Dump ("Stickney/Tyler Facility")

Dear Ms. Estes:

On May 17, 1995, I received, on behalf of Vallet Paint Service Company ("Vallet Paint"), a package of information from Jane Montgomery of Schiff, Hardin & Waite. Accompanying the package of information was a memorandum from Ms. Montgomery inviting me to attend a meeting regarding the Stickney/Tyler Facility on June 12, 1995. The memorandum also indicated, among other things, that there are currently three entities conducting PRP searches in this matter; U.S. EPA, the City of Toledo, and the Stickney/Tyler Group. Such multi-party PRP search efforts have triggered a chain of events which have had a surprising and unanticipated impact on Vallet Paint.

Specifically, Larry Sherwin, the former Vallet Paint employee whom we believe caused Vallet Paint to be initially identified as a PRP in this matter, contacted Rick Hartley of Vallet Paint to express some concerns regarding the ongoing investigations pertaining to the Stickney/Tyler Facility. Mr.

SPENGLER NATHANSON

Sherri Estes, Esq.
U.S. EPA - Region V
June 1, 1995
Page 2

Sherwin indicated that he wished to sit down and personally discuss his concerns with Mr. Hartley.

Thereafter, Mr. Hartley and I met with Mr. Sherwin to discuss his concerns. Mr. Sherwin stated that investigators associated with one or more of the above entities have been contacting him regarding the alleged disposal of wastes by Vallet Paint at the Stickney/Tyler Facility. Mr. Sherwin stated further that the investigators had been trying to get him to make statements and sign affidavits which substantially distorted that which he had told the investigators about Vallet Paint's waste streams and waste disposal practices. Mr. Sherwin also indicated that he feared that his statements were not being accurately recorded by the investigators.

I then asked Mr. Sherwin what he had told the investigators. After listening to Mr. Sherwin's summary of the statements he had made to the investigators, I asked him whether he would be willing to sign an affidavit accurately recording the extent of his knowledge regarding the disposal of wastes by Vallet Paint. Mr. Sherwin indicated that he would be willing to do so. A copy of an affidavit which has since been executed by Mr. Sherwin is attached hereto as Exhibit 1.

As you can see, Mr. Sherwin's affidavit does nothing more than support Vallet Paint's claims that its waste streams contained no hazardous substances whatsoever. In fact, Mr. Sherwin's affidavit is consistent with Vallet Paint's claims that its waste streams contained nothing more than normal solid wastes.

In light of the foregoing, Vallet Paint believes it has clearly demonstrated that it has been improperly identified as a PRP in the above-referenced matter. Therefore, Vallet Paint would request that U.S. EPA again review Vallet Paint's PRP status in light of this new and unexpected information. After you have had a chance to do so, please contact me to discuss the removal of Vallet Paint from the PRP list in this matter.

Lastly, I trust that U.S. EPA's investigators in this matter have not been employing the types of tactics described by Mr. Sherwin. Obviously, I hope you would agree that such conduct is clearly improper and inappropriate.

SPENGLER NATHANSON

Sherri Estes, Esq.
U.S. EPA - Region V
June 1, 1995
Page 3

Thank you for your continued cooperation in this matter.
If you have any questions, please do not hesitate to contact me
directly.

Very truly yours,

SPENGLER NATHANSON

Shane A. Farolino

SAF/cej
Enclosure

cc: Richard B. Hartley
Michael S. Katz, Esq.
Klaus M. Belohoubek, Esq.

H:\SAF\06069E5.LTR

AFFIDAVIT OF LARRY SHERVIN

STATE OF OHIO)
)ss:
COUNTY OF LUCAS)

I, Larry Sherwin, being first duly cautioned and sworn, state as follows:

1. I was employed at Vallet Paint Service Company ("Vallet Paint") located at 1808 Adams Street, Toledo, Lucas County, Ohio from approximately 1963 to 1965, and again from approximately 1968 to 1970. During my employment with Vallet Paint, I held the position of delivery driver.

2. The duties and responsibilities associated with the position of delivery driver included making deliveries, doing routine cleaning work, and hauling waste materials generated by Vallet Paint. I would frequently deliver cans of paint to customers. From time to time, I would deliver sixteen (16) gallon and fifty-five (55) gallon drums to customers. I believe the drums contained some form of solvent.

3. From time to time, I would pick up empty drums on my delivery runs. I would bring the drums back to Vallet Paint, and the drums would be stored behind the garage. On rare occasions, the drums would have some minor amounts of residue in them. I do not know what the residue might have been, nor do I know how often this would have occurred.

4. As a result of my employment with Vallet Paint, I became extremely familiar with not only the nature and amount of waste materials generated by Vallet Paint, but with the handling and disposal of those waste materials by Vallet Paint as well.

5. Specifically, the waste materials generated by Vallet Paint consisted almost entirely of empty five (5) gallon paint cans containing minor amounts of paint residue, empty paint thinner cans containing only minor amounts of thinner residue, empty cardboard boxes and paper materials.

6. The empty paint cans and thinner cans generated by Vallet Paint were the main byproducts of the paint mixing process. If a customer needed a certain color of paint, usually two or more different colors would have to be mixed together, sometimes with thinners, in order to obtain the desired result. When the paints were mixed, the paint cans would be tilted upside down and drained so as to avoid wasting any paint whatsoever. Thus, empty paint cans and thinner cans containing minor amounts of paint and thinner residue were the natural result of the paint mixing process.

7. The cardboard boxes disposed of by Vallet Paint were, for the most part, the shipping boxes for the cans of paint and thinner purchased by Vallet Paint.


8. Except to the extent that Vallet Paint's waste materials contained empty paint cans and thinner cans with only minor amounts of residue in them, as previously mentioned in paragraphs 5 and 6 above, during my employment with Vallet Paint, I never transported paints or thinners from Vallet Paint to the Dura Avenue Landfill ("Dura") or the Stickney Avenue Landfill/Tyler Street Dump (the "Stickney/Tyler Facility") for disposal. To the best of my knowledge, information and belief, paints and thinners were never disposed of at Dura or the Stickney/Tyler Facility by Vallet Paint.

9. During my employment with Vallet Paint, I never transported fifty-five (55) gallon drums, empty or otherwise, to Dura or the Stickney/Tyler Facility for disposal. To the best of my knowledge, information and belief, fifty-five (55) gallon drums, empty or otherwise, were not disposed of at Dura or the Stickney/Tyler Facility by Vallet Paint. To the contrary, any empty drums which accumulated were usually sold to local drum recycling firms.

10. During my employment with Vallet Paint, I never picked up waste materials from any Vallet Paint customer and hauled them to Dura or the Stickney/Tyler Facility for disposal. To the best of my knowledge, information and belief, Vallet Paint neither instructed nor permitted its delivery drivers to pick up waste materials from any of its customers and haul them to Dura or the Stickney/Tyler Facility for disposal.

11. I am no longer employed by Vallet Paint and do not stand to gain in any way, financially or otherwise, as a result of my giving this statement.

FURTHER AFFIANT SAYETH NAUGHT.


Larry Sherwin

Sworn to before me and subscribed in my presence this 24th
day of May, 1995.


Notary Public

2-1005089-05.07

MARY ANN LAWSON
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 28, 1997



matlack, inc.
pipeline on wheels[®]

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

June 22, 1995

TELECOPY AND
CERTIFIED - RETURN
RECEIPT REQUESTED

Sherry L. Estes, Esquire
Assistant Regional Counsel
U. S. Environmental Protection
Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: **Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")**

Dear Ms. Estes:

In our phone conversation this morning, you accused me of obtaining Mr. Sherwin's affidavit "by duress." You alleged that I had threatened to sue Mr. Sherwin unless he changed his testimony and recanted his earlier statement to U. S. EPA. Because Mr. Sherwin has been interviewed by several people, I asked if he referred to me specifically by name. You replied yes - that this is what your investigator told you. When I suggested that the investigator did an extremely poor job of interviewing Mr. Sherwin in the first place and might be trying to cover this up, you responded that you had the utmost confidence in the honesty and integrity of your investigator.

I will repeat what I told you over the phone. The allegations are patently offensive and entirely untrue.

Sherry L. Estes, Esquire
Page 2
June 22, 1995

You can be as annoyed as you like that I have filed another FOIA request. I will continue to probe for information until someone, anyone, provides me with a single piece of credible evidence linking Matlack to the Site. Your suggestion that my latest FOIA appeal was unnecessary, that "you were simply too busy to respond," and that I need only pick up the phone to call you was a rather curious one given our history on this issue in federal court.

It would appear that you have, needlessly and very inappropriately, elevated a professional disagreement to a personal one.

I would like the name and phone number of the investigator that you claim made the statements which you seemed to so clearly recollect. I would also like copies of any notes this investigator has generated that support your allegations. You may consider this request to be a part of the FOIA request I made on May 19, 1995.

Finally, I would like you to tell me whether this investigator, you or anyone else at U.S. EPA has repeated these slanderous remarks to anyone else.

A prompt response would be appreciated.

Sincerely,

Klaus M. Belohoubek
Vice President - General Counsel

KMB/gmh

1898

14-00000



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

CS-29A

June 23, 1995

Klaus M. Belohoubek
Vice President--General Counsel
Matlack, Inc.
One Rollins Plaza
P.O. Box 8789
Wilmington, DE 19899

Re: Stickney Avenue Landfill and
Tyler Street Dump
Toledo, Ohio (the "Sites")

Dear Mr. Belohoubek:

I write in response to your May 19, 1995 letter to Elizabeth Reiner regarding the above-referenced Superfund Sites, and also to confirm our conversation of June 22, 1995. In this letter, you ask the following questions: (1) Is Matlack a PRP at these Sites, and (2) Has U.S. EPA identified any additional information beyond that was provided in response to Matlack's FOIA lawsuit that "in any way suggests that Matlack has a connection to these Sites?"

In response to the first question, I personally wrote you on December 27, 1994, explaining that I did consider Matlack to be a potentially responsible party at the Sites, and further explaining, in general, what I understand to be the general practice in Region V, U.S. EPA, regarding the quantum of evidence necessary for individuals and companies to be named on PRP lists. Based upon the discussion contained in this letter, a copy of which is enclosed for your convenience, I still consider Matlack to be a PRP at the Sites. Because U.S. EPA's investigation, and that of the PRP steering committee which is cooperating with U.S. EPA, are on-going, it is not appropriate, at this time, for Region V to drop Matlack from the PRP list.

During our conversation, we also discussed the nature of any information which U.S. EPA had developed subsequent to Matlack's FOIA lawsuit. I informed you that in late 1994 I conducted a number of depositions, and asked the witnesses if they had any information of involvement of any number of other entities, at the Sites. The resulting transcripts, after being redacted to

Klaus M. Belohoubek
Matlack, Inc.

Re: Stickney and Tyler sites
June 23, 1995

Page - 2 -

delete information identifying the witness giving the deposition, as well as the names of other individuals U.S. EPA might wish to contact in the course of its investigation, have previously been provided to other FOIA requestors. I have examined these transcripts, and only one of these transcripts is responsive to your letter. The entire copy of this redacted deposition is enclosed with this letter.

In addition to the deposition transcripts, I indicated that U.S. EPA's civil investigator had conducted certain interviews subsequent to the date upon which Matlack had previously been provided documents responsive to its earlier FOIA request. During our June 22, 1995 conversation, I mistakenly told you that I could check an internal document, which was updated during my recent maternity leave, in order to verify whether any of these interview notes contain references to Matlack. After contacting my enforcement specialist, I have been informed that these interview notes were not indexed as a part of the cross-reference document. Additionally, the civil investigator who prepared these summaries is currently out in the field. I must await his return in order to ensure that I can perform a diligent search for responsive documents.

Thus, this letter serves to convey a partial release of information requested by your May 19th letter, which arguably contains a request for information pursuant to the Freedom of Information Act, (FOIA), 5 U.S.C. § 552 (1988). Any additional responsive information will be provided once I have been able to talk with U.S. EPA's civil investigator. Additionally, you should expect, under separate cover, a denial, pursuant to FOIA, of the complete, unredacted transcripts.

You indicated to me that you would not withdraw your pending FOIA appeal until you have had a chance to review the redacted transcripts, and any additional information which might be provided. You further stated that you would inform me, or U.S. EPA's Headquarters FOIA office, of your decision.

Based upon our current schedule, during the month of September 1995, U.S. EPA plans to send out a notice which would invite parties to negotiate with the Agency to implement the remedy selected for the Sites. A final decision as to whether to notice Matlack in this regard will be made at that time. You may contact me then for the results of U.S. EPA's determination.

Klaus M. Belohoubek
Matlack, Inc.

Re: Stickney and Tyler sites
June 23, 1995

Page - 3 -

Any additional correspondence with regard to the Sites should be directed to my attention, instead of Ms. Reiner's. Any questions may be directed to me at (312) 886-7164. Any additional request for documents pursuant to FOIA should be directed, in the first instance, to our Diane Gountanis, Region V Information Officer, mail code MIS-13J, 77 W. Jackson, Chicago, Illinois 60604. Sending a request directly to her will enable Region V to better respond to your requests for information. Information regarding the status of a FOIA sent to Ms. Gountanis may also be obtained by calling her at (312) 886-6686.

Sincerely,

A handwritten signature in cursive script, reading "Sherry L. Estes".

Sherry L. Estes
Assistant Regional Counsel

Enclosures

cc: B. Bruce (w/ encl.)
T. Williams (w/ encl.)
D. Gountanis (w/o encl.)
T. Barounis (w/o encl.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
77 WEST JACKSON BOULEVARD
CHICAGO, ILLINOIS 60604-3590

IN THE MATTER OF:

STICKNEY/TYLER, SACM SITE
3900 STICKNEY AVENUE
TOLEDO, OHIO

Deposition of [REDACTED] a
witness herein, called by the U.S. EPA as if
upon Direct Examination under the Federal Rules of
Civil Procedure, taken before me, the undersigned,
Philip H. Gaines, a Notary Public in and for
the State of Ohio, pursuant to Notice and
stipulations of Counsel as hereinafter set forth,
at the offices of Gaines Reporting Service, 317 N.
Superior Street, Toledo, Ohio, on Wednesday,
November 30, 1994, commencing at 3:00 p.m..

2

APPEARANCES:

On behalf of the U.S. EPA:

Sherry L. Estes
Assistant Regional Counsel
U.S. EPA
611 Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 886-7164

3

[REDACTED]
being first duly sworn as hereinafter certified,
was deposed and testified as follows:

MS. ESTES: Let the record
reflect that this is the deposition of
[REDACTED] and it's being done
pursuant to subpoena under the CRCLA
Statute in the matter of the
Stickney/Tyler Landfill.

DIRECT EXAMINATION

BY MS. ESTES:

Q. [REDACTED], my name is Sherry Estes. I'm an
attorney with the United States
Environmental Protection Agency.

The purpose of this deposition is to
find out about waste disposal at the
Stickney and Tyler Landfills. Our job is
to find out which companies may have
disposed of waste at the landfills and
those companies can be responsible under
the Super Fund Statute, or it's also called
CRCLA, for cleaning up the waste or
performing a cleanup. I'm trying to find
out who disposed at the landfills, what

they disposed of, how much they may have
disposed of, and that's why I've asked you
to give testimony today.

Do you acknowledge having received a
subpoena asking you to be here on this day?

A.

Yes.
Q. Actually I think it was originally set for
December 1st and then we talked --

A.

The 16th of November.

Q.

Or was it the 16th? Excuse me, that's
right, it was November 16th and then we
switched it to today, is that correct?

A.

Yes.

Q.

Do you have any questions about what my
role in this deposition is?

A.

No, I perfectly understand.

Q.

Do you currently work for [REDACTED]
[REDACTED]?

A.

No, [REDACTED] been out of business since 1982.

Q.

Okay, and is that [REDACTED] now?

A.

Well, [REDACTED] bought them.

Q.

Are you a current -- excuse me, go ahead.

A.

I retired before then from them. I retired
in '80.

5

Q.

Okay, so you're not a current employee of
[REDACTED] either?

A.

Well, they classify us as the [REDACTED] portion
of their operation. In other words we're
still classified as [REDACTED] even though
[REDACTED] does everything, they pay our
pension and everything, take care of the
medical and so forth.

Q.

Okay, but you are retired? You're not
currently working for them?

A.

No, I'm not working.

Q.

Are you in any way represented by an
attorney from [REDACTED] Corporation?

A.

No.

Q.

Are you represented by your own attorney?

A.

No.

Q.

Do you have any other questions regarding
or do you have any questions regarding my
role in this deposition?

A.

No.

Q.

You do understand that your testimony is to
be, is under oath?

A.

Yes.

Q.

Do you understand what that means?

6

A.

Yes.

Q.

What does that mean?

A.

Well, if you're under oath you swear that
what you are going to say is the truth as
far as you know and that if you don't it's
perjury.

Q.

I'm going to ask you a series of questions
about the Stickney and Tyler Landfills and
I'll try to make the questions
understandable, but if you don't understand
a question will you stop me and ask me to
state the question again or to clarify it?

A.

Yes.

Q.

Unless you tell me that you don't
understand a question I won't know that you
don't understand.

A.

Yes, I understand that.

Q.

So if you answer a question I'll need to
assume that you understood the question.

A.

Yes.

Q.

One other thing, you do notice that this is
being recorded by a court reporter, okay?

A.

Yes.

Q.

And afterwards there will be a transcript,

2 Because it's being recorded you can't nod
3 your head to answer a question.
4 A. Understood.
5 Q. Or use hand gestures.
6 A. Yes.
7 Q. Okay, can you state your full name and
8 address for the record, please?
9 A. [REDACTED]
10 [REDACTED]
11 Q. [REDACTED] what is your educational
12 background?
13 A. Twelve years, graduated from high school
14 and I had some special courses at the
15 University Of Toledo.
16 Q. What kind of special courses were they?
17 A. Well, one was on labor and management.
18 Q. About how many courses did you take?
19 A. Well, that was the main one and the other
20 ones were just more or less educational
21 type.
22 Q. Continuing education or --
23 A. No, it was different meetings on, well, the
24 one was for classification of elderly

8
1 people. In other words they had like a
2 seminar on that and that went on for a few
3 months, and one on business and management
4 that took two years.
5 It wasn't a steady deal. It was a
6 couple days a week for which I got a
7 certificate.
8 Q. Did you complete any type of degree
9 program, associate's degree or anything
10 like that?
11 A. No.
12 Q. Did any of these courses relate to the work
13 that you were doing at the time?
14 A. Yes, to a point.
15 Q. Okay, which courses?
16 A. Well, the labor and management course that
17 I took it, dealt mostly with at that time I
18 was a union steward and I was involved in
19 the union and they had a course to, oh, to
20 show operations of business and how labor
21 and management could coincide with each
22 other.
23 In other words they tried to give us,
24 oh, a course on how each would function and

9
1 it was only dealing with negotiations with
2 the companies.
3 Q. Labor negotiations?
4 A. Yes.
5 Q. Did you have any other type of vocational
6 training?
7 A. Well, I took several vocational courses. I
8 took one through Toledo Electric Auto-Lite
9 on electrical functions in automobiles.
10 I'm trying to think now. That's about all
11 I can remember. I did get a certificate
12 out of that.
13 Q. Where did you start working after you got
14 out of high school?
15 A. I went in the United States Navy.
16 Q. Okay, and when did you get out of the Navy?
17 A. 1945. 1945 or '46. '45.
18 Q. Okay, what did you do then?
19 A. Well, in the Navy I was, they were going to
20 set me up as a machinist mate. In other
21 words when I graduated from high school I
22 took machine shop training and then instead
23 of putting me in they were going to send me
24 on a battleship.

2 Florida, Air Force, United States Navy Air
3 Force, and then after I served in the
4 United States Navy Air Force for a while I
5 transferred to the Commissary Department
6 and the Commissary Department they switched
7 me over to a motor torpedo base and I come
8 out of the Navy as a qualified supervisor
9 of a bake shop.
10 Then after I got out of the Navy I
11 went into sales. I worked for a --
12 Q. Who did you work for?
13 A. [REDACTED]
14 [REDACTED] I think it is.
15 I worked there for a while and then I
16 went into selling [REDACTED]
17 [REDACTED] It was a small business.
18 From [REDACTED] I went to [REDACTED]
19 Q. Okay, and what year did you go to [REDACTED]
20 A. 1948.
21 Q. Okay, and what was the nature of your job
22 with [REDACTED]
23 A. [REDACTED] Actually it was at
24 the [REDACTED]

11
1 Q. Tell me a little bit about what you did?
2 A. Well, in a terminal you -- actually I did
3 the whole operation. I did billing. I
4 mixed the oils. I worked in the garage. I
5 drove semi. That was about it. In other
6 words I did the whole operation there.
7 Q. So were you kind of like the operations
8 manager for the terminal?
9 A. No, you did the different jobs. In other
10 words on the terminal there we had
11 different products and on the black oils,
12 which we refer to as black oils, we blended
13 those into different viscosities, and of
14 course you did billing of the trucks with
15 the bill of lading for the trucks that came
16 in there.
17 Q. What types of products or types of oils did
18 you handle at this terminal?
19 A. No. 2 fuel oil, heavy fuel oil, 100
20 viscosity, 400 viscosity and residual 6
21 Bunker C oil.
22 Q. Okay, and who were your primary customers?
23 A. And jet fuel.
24 Our primary customers were just about

12
1 anybody in the oil business because at that
2 time they had what they called an exchange
3 policy and we supplied almost anybody. We
4 supplied the different oil companies and
5 the local customers and the schools and the
6 factories and so forth. We had the
7 products to supply them with.
8 Q. You're talking about for fuel oils or what
9 are you --
10 A. Fuel oil and gasoline and of course there
11 was jet fuel. We supplied American
12 Airlines in Detroit.
13 And as far as the, there was a
14 procedure they used in the oil business
15 that if you were in a certain district and
16 you had certain products and they didn't
17 they would make an exchange with you. I
18 didn't know the total office procedure on
19 that, but I do know that they did exchange
20 products.
21 Q. Kind of a barter type of system?
22 A. Barter, yeah. In other words if we were
23 close to a location and we needed certain
24 or we had an outlying area where we

1 supplied a product if it was easier for us
2 to get it from another company we did.
3 It was an exchange principle, but I
4 didn't work in that part of it. That was
5 done in other offices.
6 Q. How big was this terminal?
7 A. Pretty good size. We had, well, there were
8 times when we would put out a million
9 gallons in an eight-hour period.
10 It was a big operation. We had one of
11 the largest terminals in this area.
12 Q. How much oil could you store at any one
13 time at this terminal?
14 A. Oh, it would run into the millions. I
15 wouldn't have any idea. We had a couple of
16 million-gallon tanks there and we had the
17 different products, the storage on the
18 different products would determine the
19 inventory.
20 In other words, if we had an
21 approximate sale of so many gallons of one
22 product, why, they would have the
23 equivalent storage to maintain that demand,
24 but our biggest storage would be gasoline

14
1 and then of course would come the fuel oil.
2 Q. So that the gasoline was what was in the
3 two million-gallon tanks?
4 A. Probably gasoline. We had a million-gallon
5 tank they had there.
6 Q. You had two one-million-gallon tanks you
7 said?
8 A. Well, I don't remember right offhand how
9 many we had, but that was our biggest
10 storage, gasoline.
11 Q. Do you know approximately how many tanks
12 you may have had?
13 A. Oh boy, I wouldn't have any idea, but now
14 the terminal had one set of storage tanks
15 and the refinery had another set of storage
16 tanks. In other words the operation was
17 that we would more or less buy the product
18 from the refinery. They would pump it over
19 to our tanks.
20 Q. This was also part of [REDACTED] was it not?
21 A. Yeah, the refining division was one section
22 here in Toledo and the terminal and sales
23 was another section.
24 Q. Were they just two separate divisions or

15
1 was there a subsidiary? Do you know?
2 A. No, it was all one. It was just a
3 different division, see.
4 Q. Okay, so how many gallons of gasoline or
5 oils did the refinery refine in a -
6 A. I wouldn't have any information on that
7 because I never worked there at the
8 refinery. I stayed with the terminal most
9 of the time. In other words, I hired in to
10 the terminal and I stayed there.
11 Now, we had business over at the
12 refinery. I used to deliver products over
13 there as they needed them because of they
14 had to keep certain supply records and
15 everything. In other words, the refinery
16 would actually buy stuff back from us for
17 their own usage, see.
18 Q. Do you know how many tanks the refinery
19 had?
20 A. Oh boy, they had a big tank farm out there.
21 I wouldn't have any idea how many tanks,
22 but they had a huge storage area there.
23 Q. More than a hundred?
24 A. I would say so.

1 more than five hundred.
2 A. No, I wouldn't say five hundred, but they
3 had at least a hundred out there.
4 Q. And when you sold fuel oil or gasoline, how
5 did you sell it? I mean how did they take
6 it away from the --
7 A. By tanker.
8 Q. Tanker truck?
9 A. Our trucks would go to our loading rack and
10 they would load and we would make the
11 billing out and they would deliver it.
12 Q. So was it always your trucks delivering or
13 did other people's trucks --
14 A. Our own trucks delivered our products and
15 the other companies would come in with
16 their trucks and we would bill them there
17 for the product that they had taken from
18 our plant.
19 Q. When did this terminal begin operation? Do
20 you know?
21 A. Well, actually [REDACTED] -- oh, what
22 was the name of this company. They bought
23 this one company out that was there
24 already. I can't think of the name of that

17
1 company. Then of course [REDACTED] operated from
2 then.
3 First they operated on [REDACTED]
4 [REDACTED]. We only had
5 two racks there.
6 Q. Did you work at [REDACTED]
7 A. Yes. Yes, and then they built the bigger
8 terminal down the street on [REDACTED]
9 there by the railroads there. I can't
10 think of the name of the railroad, but
11 anyhow they built that rack.
12 Let's see, we had one, two, they had
13 about twelve loading racks there. We call
14 them rack spaces where the people would
15 load.
16 Q. What year did you build the larger terminal
17 [REDACTED]?
18 A. I think it was early '50's I think it was.
19 I wouldn't remember that year on that.
20 I'm trying to think. It was before
21 '58. So it would be between I would say
22 '50 and '58, in that area, that space.
23 Q. Was the refinery already there or was that
24 built at the same time?

18
1 A. Now, when I first went to work for them in
2 '48 the refinery was on one side of the
3 street and the loading terminal was on the
4 other side of the street and that was there
5 when I hired in.
6 Q. But you said they later built the other
7 terminal?
8 A. Then down the street they built the newer
9 rack, the terminal. They built the new
10 terminal down there.
11 Q. But the refinery stayed at the same place?
12 A. The refinery stayed right in the same
13 place, yeah.
14 Q. Did you have any responsibility for waste
15 disposal [REDACTED]?
16 A. Well, yes.
17 Q. What was the nature of your responsibility?
18 A. Well, if we had water in the gasoline tank
19 we opened it up and let the water out.
20 Q. Okay, was there any other types of waste
21 that you disposed of?
22 A. No, just mostly on oil and water, I mean
23 oil and gas, and the other residual oils
24 and that they didn't have much to, you

1 couldn't take anything off of that because
 2 that was a higher viscosity.
 3 Q. Did you ever deal with Refiners Terminal
 4 Transport drivers?
 5 A. Yes, they did a lot of loading out of
 6 our terminal.
 7 Q. What, did they purchase product from you?
 8 A. They were what is commonly referred to as a
 9 common carrier and they would carry product
 10 for any company that had liquid products to
 11 deliver. In other words they would carry
 12 chemicals, they would carry gasoline, they
 13 would carry anything that was liquid.
 14 Q. Okay, but what they would carry from your
 15 terminal would be product that was usable
 16 by another party?
 17 A. Yes. Even now a lot of the other oil
 18 companies would use them to get products
 19 from us and deliver it.
 20 In other words, say an outfit was in
 21 Detroit and they wanted No. 2 fuel oil
 22 delivered 20 miles away from Toledo. They
 23 would contact the Refiners, they would come
 24 to our terminal and load up and deliver it

1 rather than to drive to Detroit. In other
 2 words what they did is save mileage, but
 3 that was a constant.
 4 A common carrier would carry for
 5 anybody, it didn't make any difference who,
 6 and it all depended whether their tanks
 7 could hold the product or not. In other
 8 words some products they couldn't very well
 9 carry because they would have to go through
 10 the trouble of washing the tanks out and
 11 everything before they could haul another
 12 product unless they had what they call a
 13 dedicated truck.
 14 A dedicated truck would always only
 15 carry one product. Now, we had a jet fuel
 16 truck that was dedicated and that's all
 17 that carried is jet fuel.
 18 Q. What other kinds of products might have
 19 been incompatible, that you'd have to clean
 20 a truck out before you could carry
 21 something like that?
 22 A. Oh, certain chemicals and actually I don't
 23 really know what all their hauling was. I
 24 know Refiners carried almost anything from

1 acids on down. They had the equipment to
 2 handle all that.
 3 So certain tanks they would only load
 4 certain things onto. In other words you
 5 couldn't take an acid tanker and put
 6 anything else in it, see.
 7 Q. Do you know what kind of acids they hauled?
 8 A. No, I wouldn't have any idea because we
 9 never handled acids or anything. We
 10 strictly were petroleum products.
 11 The only thing you had to be real
 12 careful was some of those trucks did carry
 13 jet fuel, see, and they would have to be
 14 flushed out before they could carry the jet
 15 fuel.
 16 Not all of the companies had a
 17 dedicated truck. In other words, they'd
 18 carry almost anything.
 19 Q. What would happen with the waste water if
 20 they'd clean out a truck?
 21 A. Well, now in our place they didn't do much
 22 cleaning at our place. Once in a while
 23 maybe they would flush out, but we had a
 24 drain that went to the refinery and they of

1 course would either burn the product in
 2 their furnace or whatever, but our stuff
 3 whenever we flushed or drained it from the
 4 trucks went into this catch basin on the
 5 loading rack and then it went to the
 6 refinery.
 7 Q. How often would you clean out your trucks?
 8 A. Well, until we got that dedicated truck
 9 we'd have to if our truck would carry fuel
 10 oil or gasoline we'd have to flush it out.
 11 Q. This was a dedicated truck for the jet
 12 fuel?
 13 A. Well, then we got the dedicated truck. We
 14 didn't have to flush that because that only
 15 carried jet fuel.
 16 Q. So for instance if you had this dedicated
 17 truck that carried jet fuel you didn't have
 18 to clean that truck out?
 19 A. No. No, because that's all it handled is
 20 jet fuel, that's all.
 21 Q. There wouldn't be anything that might come
 22 out of the jet fuel, you'd get a sludge or
 23 something in the bottom that you'd need to
 24 clean the truck out every once in a while?

1 A. No, the jet fuel they were very touchy with
 2 that. It was highly filtered. In other
 3 words it went through a special filtering
 4 process and usually there was no sediment
 5 or anything in that product.
 6 It had to be clean. It had to be real
 7 clean because when we arrived at our
 8 destination they would take a sample to see
 9 if there was any dirt in it.
 10 Q. Just as kind of a caution, a lot of times
 11 you know where I'm going with a question
 12 but it's very difficult for Mr. Gaines to
 13 get down both of us talking at once. So if
 14 you could just wait until I finish and then
 15 I'll listen to you for as long as you want
 16 to tell me about something.
 17 A. All right.
 18 Q. Did any of your other trucks have to be
 19 cleaned out on a periodic basis?
 20 A. As a rule, no, because most of our trucks
 21 now -- the gasoline and the fuel oil was no
 22 problem. In other words you didn't have to
 23 worry about that. So as a rule they were
 24 pretty well cleaned before we'd load the

1 load.
 2 As far as the residual oils, the heavy
 3 black oils, they were a common carrier
 4 hauled those for us. We didn't haul, well,
 5 at one time we did have a truck that
 6 carried 100 viscosity oil because we had
 7 some customers that had a furnace that
 8 could handle it, but that kind of faded
 9 away. People got away from it.
 10 So actually with our trucks about the
 11 only thing we'd actually carry in it would
 12 be gasoline, No. 2 fuel oil, kerosene and
 13 No. 4 oil we called it, it's a little
 14 heavier than No. 2 oil.
 15 Q. Okay, and those particular fuels did not
 16 have sludges at the bottom of them?
 17 A. No, our stuff come out pretty clean. Not
 18 the fuel oil or the gasoline, that was --
 19 in other words if you drained out a truck
 20 delivering with No. 2 fuel oil it would
 21 drain enough to where it wouldn't affect
 22 the gasoline product, see.
 23 Q. Approximately what percentage of your
 24 product was black oils?

1 A. I'd say maybe 20 percent. It was maybe a
2 little more, but to give you a percentage
3 --
4 Q. Just roughly.
5 A. I would say about 20 percent.
6 Q. What are black oils used for?
7 A. Okay, they're used in special furnaces
8 where the burner can take, now 100
9 viscosity wasn't too much of a problem
10 because that was kind of a thin oil, but
11 your 400 had to have a special burner and
12 the No. 6, what we called Bunker C, had to
13 be, the oil had to be preheated before it
14 could go into the furnace.
15 In other words the No. 6 oil if you
16 didn't deliver it, we had to keep that at
17 200 degrees and we had to deliver it at 200
18 degrees, and if you didn't reach your
19 destination in time for it and it cooled
20 down too much you couldn't pump it off. It
21 would change into a real heavy tarlike
22 substance.
23 See, now the No. 6 oil was our base
24 oil and we would blend what we called 4T

26
1 oil with the No. 6 to make the 400 and the
2 100 viscosity. Now, on your 400 viscosity
3 they used that on Naval ships and that they
4 had to use it. Now, the Bunker C oil
5 they'd use it on the big boats and that.
6 You see your No. 6 oil, in other words
7 the 100 and the 400 and the 6 they each had
8 so many BTU's per gallon and your No. 6 of
9 course had a lot of BTU's because it was
10 almost the equivalent to coal. Now, your
11 400 had BTU's and the 100 had BTU's, but it
12 would vary on the weight of the oil, the
13 thickness of the oil.
14 Q. What other entities may have used these
15 oils other than say the Navy?
16 A. Well, the factories used to use it.
17 Q. Which factories used it?
18 A. Well, now you've got me because the only
19 thing we ever got into was the 100 and that
20 was mostly the like they had some
21 residential areas that had that type of
22 furnace to handle it, but the 400 and the
23 No. 6 was handled by common carriers.
24 We didn't haul 400 or 6. Once in a

27
1 great while we might take a 400 vis oil and
2 deliver it, but not very often.
3 Now, I'm trying to think of what
4 companies here. I can't remember the
5 companies. I billed the billings, but I
6 can't remember who they were.
7 Now, every time, not every time, but a
8 good share of the time, when the Naval
9 vessels would come in to the Maumee River
10 for some reason or other we'd furnish them
11 with 400.
12 Q. Who were the common carriers that you dealt
13 with?
14 A. Well, there was one, Gilmor, and then
15 Gilmor sold out to Matlack; RT&T, Refiners
16 Terminal & Transport; and Egner; and then
17 there was Bauer. Let me think now.
18 Then there was an outfit from Detroit.
19 Then there was Wagner from, they were
20 someplace up in Michigan, and they came in.
21 Let's see, who else. There were several
22 other ones, smaller outfits, but I don't
23 remember their names.
24 Your biggest ones were Matlack, RT&T.

1 Of course Bauer was a smaller outfit, and
2 Egner of course. They went out after a
3 while and somebody else took their place.
4 Then Gilmor, well, they went out.
5 They became Matlack. They sold out to
6 Matlack.
7 Q. Do you know who Matlack's main customers
8 may have been?
9 A. No, I don't think I could remember that.
10 They used to even deliver to some of our
11 customers when we couldn't handle it.
12 Q. They used to what?
13 A. Deliver to some of our customers when we
14 couldn't handle it, but the commercial
15 customers I don't know. Oh dear, I can't
16 place those.
17 Q. Okay, is there anyone else that might have
18 more information about the commercial
19 customers?
20 A. Most of the people that worked there died,
21 have gone, and there were only about six of
22 us that worked in the terminal. I wouldn't
23 even know where they would be now. I know
24 [REDACTED]

29
1 Q. What's his name?
2 A. [REDACTED]
3 Q. [REDACTED]
4 A. [REDACTED]
5 Q. Okay, do you know where [REDACTED] he lives?
6 A. No, I have no idea.
7 Q. Does he have family in the Toledo area?
8 A. No, not anymore. [REDACTED]
9 quite a few years ago.
10 Now, the other one that worked there
11 [REDACTED] He died.
12 I'm trying to think of who else.
13 [REDACTED] he died.
14 I don't know if there's any more of
15 them left that worked there on that plant.
16 Q. Do you know of anybody from any of the
17 common carriers that's still alive, for
18 instance Matlack?
19 A. Well, they've got a terminal over on --
20 what's the name of that street? Some of
21 those guys, a couple of them are still
22 living.
23 Q. Do you remember their names?
24 A. No, I can't remember their names, but

30
1 they're mostly retired now. Every once in
2 a while I'd run across one of them, but I
3 don't see them too often.
4 Now, there's one that [REDACTED]
5 his name was [REDACTED] oh, darn it.
6 Q. [REDACTED]
7 A. Yes, [REDACTED] or something like that. We
8 used to call him [REDACTED]
9 Q. Do you know how the last name might be
10 spelled?
11 A. No, I can't remember now.
12 Q. Where did he work for?
13 A. [REDACTED]. He worked for them for
14 quite a while.
15 Q. These, the black oils, the 4 to 600
16 viscosity, would there be sludge at the
17 bottom of these, the common carrier trucks?
18 A. Well, no, I don't think so. I don't think
19 so because usually when we pumped the oil
20 the pipe would be sitting above the bottom
21 so there wouldn't be much sludge that would
22 actually go through there, and if there was
23 moisture in there, the heat of the oil would
24 evaporate the moisture. So basically they

1 didn't have --
 2 Q. The trucks wouldn't have much sludge?
 3 A. No. No, they would drain out pretty clean.
 4 Q. What about your large storage tanks, did
 5 you ever have to clean out the storage
 6 tanks?
 7 A. No. Well, yeah. Not too often.
 8 Q. How often would you have to do that?
 9 A. We usually had to do it in the summer and
 10 if it showed, we used to run what they call
 11 a water test and if it showed moisture or
 12 anything in them then they would have to do
 13 something about it.
 14 But the fact that these oils were
 15 heated, see, in other words the heated the
 16 100, they heated the 4 and they heated the
 17 6, and usually they didn't accumulate too
 18 much sludge that I know of.
 19 Usually if it did come to sludge or
 20 something they hired somebody to do it.
 21 They had what they called a tank cleaning
 22 company that would come in.
 23 Q. Okay, do you know who your tank cleaning
 24 company may have been?

32

1 A. No, I have no idea who they would be.
 2 Q. Do you know where the tank cleaning company
 3 may have taken the waste?
 4 A. No, I don't.
 5 Q. Did you ever have to clean out the tanks
 6 that held the fuel oils or the gasolines?
 7 A. Usually they would hire somebody for that.
 8 I never got into them. I wouldn't get into
 9 them because they wouldn't put enough
 10 safety factors on it. I had a problem with
 11 the company with that.
 12 In other words I wouldn't get in them
 13 unless they had proper ventilation. So
 14 some of the other fellows cleaned the tanks
 15 out, but I never did.
 16 Q. Who may have cleaned the tanks out?
 17 A. Let's see, his last name was, I remember
 18 him cleaning tanks, [REDACTED] but he, I don't
 19 know if he's still living yet. He moved to
 20 [REDACTED] I don't know if he's still
 21 living.
 22 Q. What was the first name?
 23 A. I can't remember his first name. [REDACTED]
 24 was his name, that's it, [REDACTED], not [REDACTED]

33

1 [REDACTED] I don't remember his first name.
 2 Q. That's the last name?
 3 A. [REDACTED] yes.
 4 Q. But you don't remember a first name?
 5 A. No, I can't remember his first name.
 6 Q. He was an [REDACTED]
 7 A. [REDACTED] yeah.
 8 Q. Do you remember anybody else?
 9 A. They had several other people cleaning them
 10 and that, but most of the time when tanks
 11 were to be cleaned they hired the tank
 12 companies to clean them because they had
 13 the equipment and everything.
 14 Q. And you don't remember any names of any of
 15 these companies?
 16 A. I remember a tank cleaning company, but
 17 whether it was Toledo Tank Cleaning or
 18 whatever I don't remember that.
 19 Q. Who made the arrangements with the tank
 20 cleaning companies?
 21 A. Well, if it was in the refinery they did
 22 and if it was ours our section did.
 23 Q. Who in your section may have done that?
 24 A. [REDACTED] would be one of them I think. I

1 don't know now whether he had the authority
 2 on that or not.
 3 Q. What was his first name?
 4 A. I have no idea what his first -- [REDACTED]
 5 [REDACTED] that's what it was.
 6 Q. Is [REDACTED] still living?
 7 A. No, he died.
 8 Q. Is there anyone that may have made those
 9 arrangements that's still alive?
 10 A. I doubt it.
 11 Q. Is there anyone else that you, that may
 12 have made those arrangements that you're
 13 not sure whether they're living or dead?
 14 A. I have no idea.
 15 Q. You can't remember any other names?
 16 A. No.
 17 Now, what the heck was his name, his
 18 last name? We always called him [REDACTED]
 19 but I can't remember his name.
 20 There was a [REDACTED] that worked, he
 21 was the [REDACTED]
 22 Q. Do you remember his first name?
 23 A. No. Then of course there was a [REDACTED]
 24 Q. Is [REDACTED] --

35

1 A. [REDACTED] dead. [REDACTED] They're
 2 all, I don't think there's any of them
 3 left.
 4 Q. Did you ever have any dealings with a
 5 company by the name of Community Sanitation
 6 Service or CSSI, Inc.?
 7 A. I don't recall. We might have to haul the
 8 trash and that. I don't know.
 9 Q. Do you ever remember Community Sanitation
 10 Service hauling sludge?
 11 A. No. I don't think they were equipped for
 12 that. I just, I can't, that one I can't
 13 comment on.
 14 Q. How often did you have dealings with
 15 Matlack Corporation?
 16 A. Very, very much. They were one of our
 17 bigtime haulers.
 18 Q. How much would they purchase from you over
 19 a week or month period?
 20 A. I couldn't tell you that. It was a good
 21 volume because they were a big carrier,
 22 very big.
 23 Matlack and RT&T were our major
 24 carriers. They were the major ones.

36

1 Q. Did you deal with Matlack on a daily basis?
 2 A. Oh, yes, every day.
 3 Q. Every day?
 4 A. They came in every day just about for
 5 loads.
 6 Q. And how big were the tankers that they
 7 brought in?
 8 A. 8,000 gallons. That was about the limit
 9 that you could haul in Ohio. It was you
 10 could haul 8,000 gallons of gasoline and
 11 then I think it was about 200 gallons less
 12 in fuel oil. Fuel oil is heavier than the
 13 gas.
 14 Q. How many, approximately how many gallon
 15 trucks might load up in a particular day?
 16 A. Oh, I'd say maybe twenty-five or better.
 17 See, we were a 24-hour operation. I
 18 worked eight hours and then there was
 19 another sixteen. I don't know how many
 20 came in then, but they came in all
 21 twenty-four hours around the clock. We
 22 were open twenty-four hours.
 23 Q. So the twenty-five, the estimate of
 24 twenty-five is an estimate for a 24-hour

1 period or that's for the period that you
2 were there?
3 A. Oh, I would say the period that I was
4 there. It all depends what the weather was
5 and what season it was.
6 There were times when, in other words
7 in the winter fuel oil was major. In the
8 summer it was gasoline. Of course in the
9 summer too the fuel oil was used for
10 diesel, in other words for the diesel
11 trucks.
12 Q. So if you were estimating for the time
13 period when you weren't there how many
14 tanker trucks would you say they loaded in
15 a typical day?
16 A. I couldn't tell you that because it would
17 vary too much. It would just vary too
18 much.
19 Q. Did you work the day shift?
20 A. I worked as a rule all shifts. In other
21 words when I was working on a rack as a
22 relief worker I would work different days
23 different shifts, and then there were times
24 when I would work one shift, and there were

1 times when I would relieve vacations and
2 work all shifts, so.
3 Q. Which shifts were the busiest shifts?
4 A. Well, I would say the tail end of the first
5 shift and the beginning of the -- let's
6 see. From, we opened up, well, we were
7 open twenty-four hours. They'd start
8 piling in there about six.
9 Q. Six a.m.?
10 A. Yes, and then they would taper off I would
11 say about eight p.m., and then they did a
12 moderate business from the rest of the
13 shifts.
14 Q. So when you gave me the estimate of
15 twenty-five tanker trucks was that an
16 estimate for the first shift?
17 A. I would say the main shift, yes.
18 Q. But you don't know who Matlack transported
19 the fuels for?
20 A. Well, being a common carrier it would be
21 for almost anybody, but for me to remember
22 the billings, I used to make the billings,
23 but I wouldn't remember all of those
24 billings that we put out.

1 Q. Did you bill Matlack directly or did you
2 bill the individual companies?
3 A. No, we billed the individual companies and
4 then Matlack was the carrier.
5 Q. And Matlack in turn would bill the
6 companies for the transportation services?
7 A. Well, the cost of transportation was
8 figured in the price of the oil.
9 Q. So who paid Matlack?
10 A. I suppose Gulf paid Matlack. In other
11 words they hired them to haul this stuff so
12 they would pay them, but the cost of the
13 product would be figured with the -- I
14 didn't do the billing on the cost, but they
15 were billed so much per gallon and that
16 included the cost of the product.
17 Q. They would have had some kind of
18 calculation for mileage?
19 A. Yes, that would be it.
20 Q. Do you remember anyone that you may have
21 dealt with that worked for [REDACTED]?
22 A. I met a fellow a while back, but I can't
23 remember his name now. No, I can't really
24 recall the names of those fellows.

1 The one for [REDACTED]
2 [REDACTED] I talked to [REDACTED] I don't
3 know how he feels about it now, but at the
4 time when I talked to him he says he'd be
5 willing to testify where he took the stuff
6 and everything, but I don't know where he's
7 at now.
8 Q. Took the stuff to customers or --
9 A. Yes.
10 Q. -- or waste disposal?
11 A. Well, he hauled both of them. He hauled
12 waste too.
13 Q. Do you know did Matlack haul any waste?
14 A. I suppose they did. I doubt it though.
15 RT&T was mostly the waste hauler that I
16 saw.
17 Now, as far as Matlack, now whether
18 they hauled waste or not I couldn't be sure
19 of that, because I know they didn't load
20 any waste out of our place, but I'm pretty
21 sure if RT&T hauled it so did Matlack.
22 Q. But you don't know who they may have hauled
23 the waste for?
24 A. No.

1 Q. Do you remember telling us, do you remember
2 talking to a Mr. Frank Bolenze, a civil
3 investigator?
4 A. Was he from the Toledo Police Department?
5 Q. No, he's from the U.S. EPA.
6 A. I've talked to so many of those people I
7 couldn't remember their names, I really
8 couldn't.
9 Q. He has down in his notes that Matlack would
10 take 8,000-gallon tankers to Dura and I
11 assume he meant the Dura Landfill.
12 A. Yes, they did. I saw them.
13 Q. You saw them?
14 A. The ones I saw were RT&T.
15 Q. What about Matlack?
16 A. In other words if I were to see a tanker
17 dropping stuff there it would have to be
18 when I was rollin by, see, and the one I do
19 remember is RT&T. Now, Matlack probably
20 did too, but I can't, I never saw one, but
21 I did see RT&T.
22 Q. When you were rolling by, you mean driving
23 by the landfill?
24 A. Well, that's -- the Expressway goes right by

1 there. When I'd be driving my truck I
2 could see them from the Expressway.
3 Q. Was the terminal close to the Dura
4 Landfill?
5 A. No. No, it's quite a ways away.
6 Q. So you would just see them when you
7 happened to be driving by?
8 A. I used to drive truck. I used to drive
9 semi. When I would go by there I would see
10 them, because you could see the Dura
11 Landfill from the expressway.
12 Q. How often did you drive a truck?
13 A. I drove a truck for several years.
14 Q. Was this for [REDACTED]?
15 A. [REDACTED] yes.
16 Q. And where would you, what would you be
17 doing or delivering?
18 A. Delivering to customers, to gas stations,
19 to customers, schools, factories, whatever.
20 Q. Were you driving one of [REDACTED]?
21 A. [REDACTED] yes.
22 Q. Would that be an [REDACTED]?
23 A. [REDACTED] Well, it all depended on the
24 weather. In other words when it was warm

we could haul more, when it was cold we could haul less.

I don't know if you're aware the product is sold at a degree, 60 degrees, and then they had a coefficient that they figured out what the actual gallons was. So, in other words, if you were hauling 8,000 gallons in the summer it was less than what it would be in the winter.

Q. What years did you do this?

A. [REDACTED] This would be in '60 I think, yeah.

Q. And when you said you worked in [REDACTED] when you first started with --

A. Well, that is the [REDACTED] That's combined and everything.

In other words, we had a fleet of trucks, see, and we delivered our own products, and there was a garage involved to repair the trucks and then there was a loading terminal. I worked in [REDACTED] I did everything that

was in that terminal to do. I did the billing and everything.

Q. A lot of times people when the people think of sales they think of a person that just gets on the phone and talks to people and tries to bring customers in.

A. Well, [REDACTED] had a policy that [REDACTED] regardless of what you're doing there you are. In other words, they used to make us know about the whole operation, the whole product line and everything, so that if anybody would ever ask us a question about it why we were supposed to know and try to sell them the product.

[REDACTED] I was, construction was pretty heavy then, and they wanted us if we saw a house going up to try to sell those people our oil. In other words, we were supposed to stop there and see if we could and we did.

We made a, at one time we were the leading fuel oil delivery company in Toledo. [REDACTED] and whenever

customers would call or anything we were supposed to know what to tell them and so forth. They classified us as [REDACTED]

Q. So you did all these jobs at the same time. One day you might [REDACTED] and the next day --

A. No, no, no.

Q. No?

A. If you bid on a job that's what you did. In other words, [REDACTED] If I bid in the garage I would work in the garage. If I bid in the terminal I would work at the terminal. We had to do just about every operation.

In other words, if I came in, say I came in on midnight on Sunday, why, I had to start the pumps up and everything and if a truck would come in I'd have to do the billing, see, and there were times when I had to load. I was, you know, the [REDACTED]

Then whatever you would bid on, in other words you'd bid on to be a loader

you'd be a loader. If you bid on billing you would be in the billing.

Q. See, that's what I don't understand because you said that you might do all of those. Did you --

A. Not in one day. In other words, if I was working in the terminal --

Q. You would work in the terminal.

A. -- okay, I would blend oil in between my other functions, see.

Q. What would your other functions be?

A. Well, checking on the rack. There were times when we loaded trucks, see, and when you're blending oil you time the flow. You don't have to be there. In other words, you time the flow and after so long you go there and you take your gauge and check how much oil you've got and then you shut the pump off. That's all, see.

In other words you didn't have to stand on the tank and do that. So you could be doing other things besides blending the oil.

Q. I'd like you to try to remember what

periods of time you primarily worked on the terminal, what periods of time you primarily drove a truck, what periods of time you primarily did billing.

A. Well, the billing you did when you worked at the terminal. In other words, like if I came in at midnight I was alone so I did the billing and everything, and if the person that was doing the billing had to go somewhere and do something then you did it.

Q. What years might you have worked in the terminal?

A. I started there in '48 and I worked on the home delivery of fuel oil about four years, that would be '52, and then I bid on the rack. I think I worked there a couple of years.

Q. What does working on the rack mean?

A. That was the loading rack. That was the whole, like I say, when I'd come at midnight I'd start the rack up for loading and that.

Q. Did you help the trucks load the fuel?

A. On the old rack we loaded the trucks. On

the new rack after a while, the truck driver had to load his own truck, see, but when they quit loading the trucks then we worked at the terminal there in making out the billings and all that.

Now, it would all depend which shift you would work on what you'd have to do. Now, there were times when we were busy everybody had only one operation to do because of the fact that the biller had to just constantly bill and so forth.

Now, when the period was slack like in the daytime most of the deliveries would come in the morning and then deliveries, no trucks would come in in the evening. Well during the daytime is when we loaded, mixed the oil and that, because we had to see. In other words, we had to do that in the daytime.

Q. You had to what?

A. Mix the oils.

Q. You mixed the oils because you had what?

A. You said something I didn't understand.

Well, we did that in the daytime because we

1 had to have light to see. We had to climb
2 tanks to do that.
3 Q. Oh, okay.
4 A. See, and work amongst the pipes. So that's
5 when we did most of the blending.
6 Q. And you did that as a terminal worker or as
7 a rack worker?
8 A. Well, we called it both, whatever.
9 Q. So when you're talking about working in the
10 terminal and talking about working on the
11 rack is that the same?
12 A. Well, when you worked in the terminal you
13 were, identical, yeah, because you were
14 working at the rack, the loading rack.
15 Q. Okay, you said [REDACTED]
16 [REDACTED]
17 A. I guess it would be about that. No, well,
18 that was the [REDACTED]
19 and [REDACTED]
20 Q. Okay, how long did [REDACTED]?
21 A. I don't know, about six years I guess.
22 Q. Does that take us up to 1958?
23 A. Let's see, [REDACTED], yes.
24 Q. Okay, and then after that you worked in the

1 terminal, is that correct?
2 A. Yeah.
3 Q. I'm just trying to get some type of
4 chronology here.
5 A. I wish I could help you on that, but my
6 memory is not that good on those years.
7 See, that's the thing.
8 Q. Where were you when John Kennedy was
9 elected president?
10 A. I was working on the [REDACTED]
11 [REDACTED]
12 Q. Okay, and when he was assassinated?
13 A. Yes.
14 Q. [REDACTED]?
15 A. Yes. I remember that real well because I
16 was going home from [REDACTED]
17 that day.
18 Q. I think just about everybody that was alive
19 then can tell you where they were on the
20 day that happened.
21 A. Yeah, that stands out in your memory pretty
22 clear.
23 Q. How long after that did you continue to
24 [REDACTED]

1 A. I think I bid on, not too long after that I
2 think I bid on [REDACTED]
3 [REDACTED]
4 Q. I thought you said you were done with the
5 tankers before that?
6 A. I worked [REDACTED] for a period and
7 then I got off and [REDACTED] and
8 then I went back [REDACTED], see.
9 Q. Okay, so the second time you went on the
10 [REDACTED] what years was that?
11 A. That would be before '80 because I retired
12 from there when [REDACTED] So
13 that would be I retired in '80.
14 Q. So you did [REDACTED]
15 [REDACTED]?
16 A. Not sixteen years, but, I don't know, let's
17 see, for about eight years I'd say,
18 somewhere near in that area.
19 Q. So how long did you work [REDACTED]?
20 A. I worked in the [REDACTED]
21 Q. I think I'm missing a few years in there.
22 How long past Kennedy's assassination did
23 you work [REDACTED] until about what
24 year?

1 A. Let's see, '58, I'd say maybe '60 maybe.
2 The reason I remember that is '58 I bought
3 an Edsel so I remember that. At that time
4 [REDACTED]
5 Then after -- now, I'm trying to think
6 whether I went in the garage or on truck at
7 that time. I think I went [REDACTED]
8 after that and then [REDACTED] and
9 I finished my years with [REDACTED].
10 [REDACTED]
11 Q. You said that Refiners Terminal Transport
12 drivers would haul waste?
13 A. They would haul anything.
14 Q. What do you mean by anything?
15 A. Any product that was in the petroleum line,
16 maybe even some products that weren't in
17 the petroleum line. See, they were a
18 common carrier. They would haul anything
19 that was liquid.
20 Q. They hauled acids, is that correct?
21 A. They had some special trucks for acids,
22 yes.
23 Q. Those would be dedicated trucks?
24 A. There's not much you can haul in an acid

1 truck. Now, I'm not -- I'm pretty sure
2 they had acid trucks because, see, they
3 didn't come in to our terminal with those,
4 we had nothing to do with acid, but I've
5 seen them on the road.
6 Q. Where would you see them?
7 A. Oh, anywhere in Ohio, anywhere.
8 Q. How would you know it was an acid truck?
9 A. Well, they're constructed a certain way.
10 Q. How are they constructed?
11 A. They're constructed like a thermos bottle.
12 Q. Could you explain?
13 A. They have a special liner in them and
14 they're round, completely round, and if I'm
15 not mistaken I think the weight of the acid
16 was more so they couldn't carry as much,
17 but they were just a round type tank.
18 Q. Do you know what the lining would consist
19 of?
20 A. No, I never went up to look at one of
21 those. I never went up, but I suppose it
22 would have to be some kind of a lining that
23 wouldn't be eaten by acid.
24 Q. Yes, but you don't know what the material

1 was?
2 A. No.
3 Q. Did Refiners Terminal Transport haul waste
4 to either the Stickney or Tyler --
5 I saw them at the Dura.
6 Q. Did you see them either at Stickney or
7 Tyler?
8 A. No.
9 Q. Did you see anyone, do you know of any
10 waste disposal at either the Stickney or
11 the Tyler Landfills?
12 A. All I know is about the Stickney and the
13 Tyler Landfills is that there were no
14 restrictions. You could haul anything in
15 there that you wanted to because nobody
16 cared and that includes the City of Toledo.
17 Q. How do you know that?
18 A. Because at the times that I've been at
19 these certain dumps they would have no, at
20 one time they didn't charge anything, then
21 they started charging fees, and I happened
22 to know a person that worked like at the
23 King Landfill and he was a collector and I
24 asked [REDACTED] I says did you ever check to see

1 what they were putting in there and he said
 2 he didn't care as long as he got the fee.
 3 Now, most of your dumps in this area
 4 the time that I've hauled stuff out there I
 5 saw no restrictions. They hauled whatever
 6 they wanted to. There was never a
 7 restriction on any of those places.
 8 Now, the only thing that I can
 9 remember about Dura is that they would dig
 10 a pit, I don't know who dug the pit, and
 11 they would put plastic in the pit and they
 12 would pour the stuff in the plastic pit.
 13 Q. How often were you at the Dura Landfill?
 14 A. As I rolled by I saw it from my truck or my
 15 car whenever I'd go by there.
 16 Q. Did you ever haul anything to the Dura
 17 Landfill yourself?
 18 A. No.
 19 Q. What road would you be on when you would
 20 see --
 21 A. I-475.
 22 Q. Please, let me finish the questions.
 23 A. Okay.
 24 Q. -- see trucks at Dura?

1 A. On I-475.
 2 Q. How often would you see trucks at Dura?
 3 A. I couldn't answer that. All I know is I've
 4 seen them there. I never kept a record of
 5 how many times.
 6 Q. Several times a week?
 7 A. I didn't see them that often. I didn't
 8 always go that way, but I do remember
 9 seeing them dump there.
 10 Q. Seeing who dump there?
 11 A. RT&T.
 12 Q. Do you remember seeing anyone else dump at
 13 the Dura Landfill?
 14 A. No, I don't recall.
 15 Q. You never saw Matlack dump at the Dura
 16 Landfill?
 17 A. No.
 18 Q. Did you ever see Egner dump at the Dura
 19 Landfill?
 20 A. Egner was strictly a gasoline and oil
 21 hauler. He didn't haul anything else
 22 hardly.
 23 Q. Did you ever see anyone dump at the
 24 Stickney Landfill?

1 A. No.
 2 Q. Did you ever see anyone dump at the Tyler
 3 Landfill?
 4 A. No.
 5 Q. [REDACTED]
 6 [REDACTED]
 7 A. No, it didn't. It didn't because Stickney
 8 was off away from there.
 9 Q. Okay, and Tyler and Dura are right up next
 10 to each other. You never saw anyone at
 11 Tyler?
 12 A. It was too far back to see it from the 475.
 13 Q. Okay, and you never got any closer than the
 14 highway?
 15 A. 475, that's it.
 16 Q. Just for the record I have some names of
 17 some companies that may have dumped at
 18 either Stickney or Tyler and I would like
 19 to go through and give you these lists of
 20 companies and see if you ever remember
 21 seeing trucks from any of these companies
 22 at the Dura Landfill.
 23 Libbey Glass?
 24 A. No.

1 Q. Libbey-Owens-Ford Glass? That's a
 2 different company.
 3 A. I know. No.
 4 Q. It's a little confusing to us, the names
 5 are so similar, being from Chicago, not
 6 being from Toledo.
 7 A. Right.
 8 Q. Owens-Illinois?
 9 A. No.
 10 Q. Allied Chemical Corporation, the Glendale
 11 plant, did you ever see them dump any waste
 12 at Dura?
 13 A. No, they had their own dump over there on
 14 Glendale.
 15 Q. How do you know that?
 16 A. Because I, what the heck was it, we had a
 17 deal at a meeting and I went up to get the
 18 diagrams and that of the land area there,
 19 and I have the diagrams and so forth of
 20 what they've got out there, what they had
 21 in the different areas, what they had
 22 dumped in that, and that's how I found out
 23 about that.
 24 Q. But you didn't know at the time?

1 A. No.
 2 Q. Electric Auto-Lite?
 3 A. Electric Auto-Lite kind of shut down before
 4 I got into this deal. They didn't, they
 5 went out of business.
 6 Q. Allied Signal?
 7 A. No. I don't think these outfits had
 8 anything to haul. If they would haul it
 9 they would use a common carrier, I'm pretty
 10 sure. I don't think they had any equipment
 11 of their own, see, you know, for tankers
 12 and that.
 13 Q. Do you know, do you have any idea which of
 14 the common carriers they might have used?
 15 A. Well, like I say, the two major carriers
 16 here was Matlack and RT&T.
 17 Q. Okay, do you know whether they would use
 18 the common carriers or one of the other
 19 commercial haulers like Community
 20 Sanitation Services?
 21 A. I don't ever recall seeing them having a
 22 tanker. They might have had a small tank
 23 like a fuel oil delivery truck, but I don't
 24 remember.

1 Q. I don't know that they necessarily had a
 2 tanker, but I think that they did haul
 3 liquid waste.
 4 A. By drums maybe, but I don't --
 5 Q. Okay, Prestolite Battery or Prestolite
 6 Battery Division?
 7 A. I know about them, but I don't know what
 8 they did.
 9 Q. What about DuPont?
 10 A. Well, now DuPont I heard, of course this is
 11 what I heard, they were quite a big user of
 12 these dumps, but they probably used a
 13 common carrier.
 14 Q. Did you ever see DuPont dump waste?
 15 A. No. No, I couldn't swear to that.
 16 Q. Toledo Stamping & Manufacturing?
 17 A. No. They would probably use a common
 18 carrier because they would have no reason
 19 for a tanker.
 20 Q. Why not?
 21 A. I don't, their operation, what they do,
 22 wouldn't create that much residual stuff.
 23 Q. What was their operation?
 24 A. Stampings.

1 Q. What kind of stamping?
 2 A. I think they did auto part stampings.
 3 Q. Metal stamping?
 4 A. Yes.
 5 Q. Okay, they would stamp out parts for an
 6 automobile plant?
 7 A. Well, let's see, what was that Toledo
 8 Stamping? I think they --
 9 Q. Toledo Stamping & Manufacturing is the name
 10 I have.
 11 A. What was the address?
 12 Q. Sir, I don't know.
 13 A. If it's on Nebraska or Hill Avenue there
 14 they did stampings like for valve lifters
 15 and so forth. That's what I saw of the
 16 operation. That was what I saw out there.
 17 Q. I may have the address. We'll look at that
 18 for a minute.
 19 Plaskon Electronic Materials?
 20 A. Well, that would be the same outfit that's
 21 on Glendale there, that Plaskon that I told
 22 you about.
 23 Q. The same outfit?
 24 A. Yeah, on Glendale there.

1 Q. Same outfit as compared to what?
 2 A. What was their name before? Plaskon,
 3 that's the outfit on Glendale there. They
 4 used to make these plastic coated wires and
 5 that.
 6 Now, what they dumped or what I don't
 7 know. They probably used a common carrier
 8 too.
 9 Q. Textileather?
 10 A. Now, that one would be possibly they may
 11 have used the Tyler and the Stickney
 12 because that's close proximity of their
 13 plant, but I've never seen them put
 14 anything there, but they deal in chemicals
 15 mostly and of course they would have oil
 16 and hazardous waste stuff there.
 17 Q. But you don't personally --
 18 A. I didn't see it, no.
 19 Q. General Tire & Rubber Company?
 20 A. Well, they were Textile, then General Tire,
 21 and now the employees bought it out and I
 22 think they're Textile again.
 23 Q. That's my understanding too.
 24 I already asked you about DuPont.

1 Dana Corporation or Spicer
 2 Manufacturing?
 3 A. They're both the same. Now, what they
 4 would have I don't know. In all
 5 probabilities they would have used a common
 6 carrier. I don't think they had a tanker
 7 of their own. I never saw it.
 8 Q. You never saw anything?
 9 A. No, not a tanker of their own.
 10 Q. Okay, Toledo Edison?
 11 A. Of course Toledo Edison that's a different
 12 deal. They used just about every dump in
 13 this area.
 14 Q. How do you know that?
 15 A. Well, I've seen their trucks at different
 16 places, but, like I say, I can't remember
 17 which places right now.
 18 Q. Do you remember seeing their truck at
 19 Stickney --
 20 A. No.
 21 Q. Excuse me, sir, just let me finish the
 22 sentence -- Stickney or Tyler Landfills?
 23 A. No.
 24 Q. The Dura Landfill?

1 A. I think I did, but I can't be sure on Dura.
 2 See, Dura was a pretty busy place and it
 3 seems like they were the recipients of
 4 quite a bit of hazardous waste out there at
 5 Dura.
 6 But, now, see, and then these other
 7 places -- in other words I'm more familiar
 8 with some places than I am others because
 9 of the proximity of what I would be running
 10 through or so forth.
 11 Q. Well, if you know about any of these
 12 companies being at Dura also tell me
 13 something about that. Do you know anything
 14 about any of these companies that I've
 15 listed being at Dura?
 16 A. No, I couldn't recall that. If they did a
 17 lot of them probably used a common carrier.
 18 I don't think, I don't -- now, Edison as
 19 far as I know all these years they've had a
 20 small tanker that they use, in fact this
 21 one fellow I used to work with drove the
 22 tanker, but they never had any, you know,
 23 any bigger equipment for hauling liquids
 24 and that.

1 Q. They had a small tanker for hauling what?
 2 A. Well, what they hauled in it they probably
 3 were hauling oil for their transformers.
 4 That's about the only thing that I know of.
 5 Q. Would this be product or would it be waste
 6 oil?
 7 A. Well, from their transformers they had this
 8 waste oil that they, see, they used that
 9 oil that had PCB's in it for a while. I
 10 guess they quit now, but.
 11 Q. How do you know they had used oil that had
 12 PCB's in it?
 13 A. Well, through the different information
 14 that I got in the meetings and so forth.
 15 Q. Okay, you didn't know about it at the time?
 16 A. What?
 17 Q. That they had oil that had PCB's in it?
 18 A. I knew that that oil quite a long time I
 19 knew it had PCB's in it, quite a long time.
 20 Q. Is that from your [REDACTED]
 21 A. Well, they've had several leakages from the
 22 different transformers in different areas,
 23 see, and it got in the news and so forth.
 24 Q. Okay, so your knowledge is from listening

1 to the news or reading the newspaper?
 2 A. Yes.
 3 Q. Do you have knowledge about their having
 4 PCB's in their oil from the '50's and the
 5 early '60's?
 6 A. Well, I have that knowledge through
 7 information that I got from the different
 8 meetings that I attended. They used PCB's
 9 for a long time until they got in trouble
 10 with it and then they had to switch, but
 11 they did, I did know they had PCB's in that
 12 oil.
 13 Q. Did you ever see them take any of this oil
 14 to either Stickney --
 15 A. No.
 16 Q. To Tyler?
 17 A. No.
 18 Q. To Dura?
 19 A. No. I couldn't swear to it.
 20 Q. Do you know anybody that might know
 21 anything more about Toledo Edison's
 22 disposal of oil at any of those landfills?
 23 A. In all probabilities they used their own
 24 truck to dump the stuff, but I couldn't say

1 that I ever saw them. I might have seen
2 them, but it doesn't register in my mind.
3 Q. Okay, AP Parts Manufacturing?
4 A. That's they had different products and they
5 did have for a while automotive products to
6 mix with the gasoline in cars. Now, in all
7 probabilities, I don't think I would see
8 them dump anything. If anything they would
9 probably dump it in barrels or something,
10 but at one time they did have chemicals
11 that they used.
12 Q. Do you know what kind of chemicals?
13 A. It was a petroleum product that was used to
14 mix in the gasoline to, supposed to improve
15 the engine, clean the valves and so forth.
16 I can't think of the name of it right now.
17 I did use some of it myself in my car, but
18 when they had their operation I think it
19 was over here on Water Street, or I can't
20 remember even what the location was, but I
21 know they had a location here in this end
22 of town and then they moved out to their
23 other operation on Matzinger.
24 Q. Okay, is your knowledge about AP Parts

1 based upon your just living in Toledo?
2 A. No, because I think I had something to do
3 with delivering stuff there or something
4 and I knew a fellow that worked there
5 besides, but what the heck that was I don't
6 know, but I can't even remember what I
7 delivered there or anything.
8 Q. Do you remember the name of the person that
9 you dealt with from AP Parts?
10 A. No. No, I don't remember him. He's dead
11 by now.
12 Q. The Toledo Blade?
13 A. Well, The Toledo Blade, I knew they had a
14 lot of chemicals and that from the ink and
15 all that. I used to go watch them print
16 the paper, but what they did with it I
17 couldn't swear to that on what they dumped
18 or where they took it.
19 If anything it was in a truck or
20 something that had no name on it. They
21 probably delivered it in barrels or
22 something like that, but they had no tanker
23 or nothing that I knew of.
24 Q. Do you know anything about Sun Oil's waste

1 disposal?
2 A. Yeah, Sun Oil was, of course you couldn't
3 prove it, they were dumping the stuff in
4 the, I think it was Otter Creek there.
5 Q. Dumping what in the creek?
6 A. All of their stuff at one time.
7 Q. What was the name of the creek again, Otter
8 or Outer?
9 A. Otter Creek. The only thing I know is now
10 the city takes it all, the Toledo waste
11 disposal.
12 Q. Do you know anything about a relationship
13 between Paul Jeffers and Sun Oil?
14 A. Jeffers was -- I suppose they hired his
15 cranes and that. Jeffers is a, has big
16 cranes and stuff that he rents out.
17 Q. I think he also hauls sludge for them.
18 A. I don't ever recollect Jeffers hauling
19 sludge. He might have. He might have, but
20 all I knew about Jeffers is the fact that
21 he had cranes and we had quite a bit of
22 controversy with him because he was
23 nonunion and, but other than that that's
24 it.

1 Q. The union that you belonged to was trying
2 to unionize Jeffers?
3 A. No, he just wasn't union, that's all,
4 period. He was boycotted by all the unions
5 in this town.
6 Q. We've had another witness testify that
7 Jeffers took lots and lots of sludge from
8 Sun Oil to the Stickney and Tyler
9 Landfills. Why would their product create
10 a lot of sludge and the product of [REDACTED]
11 [REDACTED]
12 [REDACTED] What was the
13 difference between the products?
14 A. Be no difference really because they would
15 have the same problems we had. It's the
16 same business, same manufacturing process,
17 same units.
18 Q. So they had basically the same kind of
19 [REDACTED]
20 A. I would say so because they manufactured
21 the same products. In other words, in your
22 refineries and that, storage problems and
23 all, they're about identical. There is no
24 difference.

1 Now, the only difference is for a long
2 time Sun Oil would not use lead in their
3 gasoline and then they said they didn't
4 need it. DuPont wouldn't sell them lead
5 then so that would be about the only
6 difference in them and the other companies
7 around here.
8 Q. Did having lead in your gasoline make any
9 difference in terms of the amount of sludge
10 that might come out of your product?
11 A. Well, the only thing is the lead was
12 extremely poisonous.
13 Q. I understand that. How would that affect
14 the amount of sludge that might be in your
15 product?
16 A. In the operation there would be no -- it
17 would be the same anywhere what you're
18 manufacturing.
19 In other words, you have condensation
20 in your tanks. Regardless what it is
21 there's condensation. Water's heavier and
22 it sinks to the bottom.
23 Well, when there's enough sludge
24 accumulates where it reaches the outlet

1 then they have to clean it out and get rid
2 of it. In other words, it would be getting
3 in the product. So their sludge wouldn't
4 be any different than anybody else's.
5 Q. But you told me you didn't have that much
6 sludge.
7 A. The sludge that we had we didn't clean it.
8 They generally put in a, called in a tank
9 company to clean it.
10 Q. So you did have sludge, [REDACTED]
11 responsible for disposing of it?
12 A. I would say so, yeah, because I don't ever
13 recollect hauling any sludge in any of my
14 trucks, never.
15 Q. All right, let me try and ask you this
16 again. How often would you have to call in
17 a tank cleaning company for any particular
18 tank?
19 A. Well, it depended on how soon the sludge
20 would accumulate in a tank.
21 Q. Well, is there any factors that influence
22 that?
23 A. The weather.
24 Q. The type of product?

1 A. Yes. In other words, say on our heavier
2 oils, we heated them. Let's see, the 100
3 was heated to about 100 degrees, the 400
4 was heated to about 140 degrees, the No. 6
5 anywhere from 180 to 200 degrees.
6 Well, the heat from that would
7 automatically condense, you know, push the
8 water out of that product, but on your
9 gasoline if you got the gasoline from the
10 refinery and it ran into the tank hot, see,
11 then it would accumulate. The heat, the
12 steam, would go up and then condense and
13 come back into the product and accumulate
14 on the bottom.
15 Q. How often would you have to clean out a
16 gasoline tank in a year?
17 A. I wouldn't have any idea on that. I never
18 took an interest in [REDACTED]
19 there because, I don't know, when we got so
20 much water in our tanks we would just open
21 the valve and let the water out on the
22 ground.
23 Q. Was it just water or water and sludge or --
24 A. It would be the water and the amount of

1 chemicals that would cling to the water or
2 the same weight and everything. In other
3 words, your gasoline was lighter and all
4 the heavier stuff would go on the bottom.
5 Q. Okay, but how often would you have to use a
6 tank cleaning service for that?
7 A. That was in our operation we had nothing to
8 do with that. It was handled in the
9 office.
10 See, in other words, every now and
11 then we'd run into a problem, there would
12 be more moisture than we had anticipated or
13 they had anticipated, then it would have to
14 be cleaned out or drained out, but we would
15 have no record [REDACTED]
16 [REDACTED] In other words, that would be in
17 the office part of the operation.
18 Q. Okay, and so you don't know how often you
19 would have to clean out a fuel oil tank?
20 A. Usually if, for instance the summer season
21 is ending, okay, and they would be using
22 that gasoline tank for oil because they had
23 to store the oil somewhere because the oil
24 was more in demand in the winter than in

1 the summer. They used to switch around
2 that way.
3 Well, when it got so low they'd run a
4 few checks on it to see if it had any stuff
5 in it and if it was bad enough I suppose
6 they would clean it, but as a rule --
7 Q. Any stuff? Any water or --
8 A. Water or sludge in that, yes.
9 Q. So the fuel oil tanks may have been cleaned
10 out once a year?
11 A. I have no idea on that. We would have no
12 record of that in our office.
13 Q. The No. 100 oil?
14 A. They didn't worry too much about that
15 basically because if there was any sludge
16 or anything it would flow through and burn
17 in the furnace and that. It wasn't that
18 much of a problem because those burners
19 were set up for something like that.
20 Q. Is that also true of the No. 400 and No.
21 600 oils?
22 A. Yes. The only difference between the 1 and
23 the 4 and the 6 is that the 6 oil before
24 they could use it in a furnace or anything

1 they had to preheat it. In other words, it
2 had to be preheated so it could flow, but
3 other than that I.
4 Q. But you don't know of them having to pump
5 the tanks out and get the sludge out of
6 those tanks?
7 A. In all the years that I've been there I
8 don't ever remember them cleaning out a No.
9 6 tank. I don't ever remember it.
10 Q. No. 4 tank?
11 A. 4 tank? I don't remember 4. Once in a
12 while they'd clean out the 4T oil, the
13 heavier fuel oil, but if we did have I
14 remember the tank cleaning companies being
15 there to clean those tanks, but I don't
16 remember when or who it was.
17 Q. Do you know who in the office may have made
18 the arrangements with the tank cleaning
19 companies?
20 A. Well, it would probably be the [REDACTED]
21 [REDACTED]. One of them was [REDACTED]
22 He's dead. The other one, like I say, I
23 knew him by [REDACTED] but I can't remember
24 his last name, but they would be the ones

1 that would make the arrangements and
2 everything. Our section there where I was
3 at they had nothing to do with any of those
4 operations.
5 Q. Champion Spark Plugs, do you know of any
6 waste disposal they did at either Stickney,
7 Tyler or Dura?
8 A. No, I couldn't on that.
9 Q. BASF or Inmont on Buckingham Street, do you
10 know anything about that entity?
11 A. I don't think Inmont. It sounds like the
12 glove manufacturing company. I don't know.
13 No, I never had anything to do with
14 them. I never made a delivery there or
15 anything.
16 Q. Doehler-Jarvis?
17 A. I'm trying to think. I don't think we done
18 much business with them.
19 Doehler-Jarvis, that's a casting
20 operation. I don't know. No, I don't
21 think we had -- I think they used gas
22 mostly for their stuff.
23 Q. When you would make deliveries to these
24 companies would you happen to have occasion

1 to see what they might have in their waste?
2 A. No. No, because it was never stored close
3 to any of our tanks that we delivered to.
4 Q. Well, that makes sense.
5 NL Industries?
6 A. NL, it doesn't sound familiar to me.
7 Q. They bought the Doehler-Jarvis facility?
8 A. Oh, National Lead?
9 Q. Probably, yes.
10 A. Yeah, Dutch Boy. Yeah, that's, you know,
11 I'm not sure, but I think we delivered 400
12 vis there, but a common carrier took that.
13 I heard about it, you know, when I was
14 working there, but I don't ever remember
15 them, I don't think they got too much from
16 us. They might have used our oil for
17 heating.
18 Q. Sinclair Manufacturing?
19 A. Well, that was up the street from us.
20 Wait, Sinclair Manufacturing, that was
21 over on Detroit Avenue. They manufactured
22 dish detergent.
23 Q. You said dish detergents?
24 A. Yeah.

1 Q. Okay.
 2 A. I'm pretty sure that was over, yeah, it's
 3 on Detroit Avenue. Somebody bought them
 4 out.
 5 Q. Purex?
 6 A. I don't remember that. I didn't think we
 7 had anything to do with them. I don't even
 8 know where they had a factory here.
 9 Q. Dow Chemical?
 10 A. Dow Chemical sounds familiar.
 11 Q. Do you ever remember them taking waste to
 12 the Stickney, Tyler or Dura sites?
 13 A. No. If anything they probably did it by
 14 common carrier so there would be no way you
 15 could tell.
 16 Q. Earl Scheib Auto Painting?
 17 A. They were on Detroit Avenue. I don't know
 18 what they did with their waste, I really
 19 don't.
 20 Q. Ferro?
 21 A. They probably sent it down the sewer.
 22 Q. Could be.
 23 Ferro?
 24 A. Ferro?

1 Q. F-e-r-r-o.
 2 A. F-e-r-r-o. Have you got an address?
 3 Q. Let me check. I think I have addresses for
 4 them and there was Toledo Stamping, was it
 5 not, the other one that you --
 6 A. Yes.
 7 MS. ESTES: Just a second.
 8 (Off the record.)
 9 Q. Sorry, I don't seem to have an address for
 10 Ferro.
 11 Toledo Stamping & Manufacturing
 12 Company on Fearing Boulevard?
 13 A. Yeah, we used to deliver oil there. They
 14 just had another like that other stamping
 15 company.
 16 Let's see, I think that one I
 17 mentioned before, one of them stamp out
 18 shells for refrigeration motors. Now, this
 19 one, Toledo on Fearing, they did, I think
 20 they did stamping and heat treating of
 21 parts.
 22 Q. Do you know anything about their waste
 23 disposal?
 24 A. No, I don't know what they would use in

1 waste disposal for what the operation that
 2 they had, because -- I wouldn't have any
 3 idea.
 4 Q. GE, General Electric?
 5 A. General Electric, is that the one over here
 6 on the east side on -- what's their
 7 address?
 8 Q. Well, I assume their address -- I don't
 9 have their address on this list.
 10 A. On Dearborn and somewhere out here, that's
 11 the only GE I know of.
 12 Q. Do you know anything about their waste
 13 disposal?
 14 A. No.
 15 Q. GTE, General Telephone?
 16 A. Wouldn't know anything about them either.
 17 Q. General Motors, I guess there was a
 18 Powertrain plant?
 19 A. Oh, that's over on Alexis Road.
 20 Q. I was told that there was a plant on
 21 Central Avenue?
 22 A. Central Avenue? Have you got an address?
 23 I think that, Central, all they did is
 24 manufacture motors.

1 Q. Well, probably Powertrain just did motors.
 2 I don't have either a listing for
 3 General Motors or Powertrain or Chevrolet
 4 for this list.
 5 A. Chevrolet, they had, they were close to the
 6 Jeep manufacturing plant there.
 7 Q. Yes.
 8 A. They probably just dumped it in the Ottawa
 9 River, but I don't know of any --
 10 Q. Do you have any information, specific
 11 information?
 12 A. No, I don't. The only one I would have
 13 information on there would be Jeep. They
 14 had this pipe going into the river.
 15 Q. Where was the pipe going into the river?
 16 A. Right over at where the, well, they were so
 17 close to the river there.
 18 Q. Just off of Stickney Avenue?
 19 A. No, no, this is over by the plant itself.
 20 They had a drainage pipe going right into
 21 the Ottawa River.
 22 Q. Where was the plant located?
 23 A. Over where I-75 is. They call it Jeep
 24 Boulevard now I guess.

1 But they did have a pipe running
 2 direct from their factory into the river.
 3 Q. How do you know that?
 4 A. I see it. When I'd go by there you could
 5 see it flowing in.
 6 Q. When you were, this is when you were
 7 driving by on 75?
 8 A. Yeah.
 9 Q. Did you ever get a good close look at it?
 10 A. No. See, there's a dump out there too that
 11 they got covered up in that area, but this
 12 --
 13 Q. That's not the Stickney Dump?
 14 A. No. No, that's their own private dump.
 15 But they did have this pipe, I don't
 16 know what action it was made them shut it
 17 off or what, but it did drain right into
 18 the river.
 19 Q. Do you know what went right into the river?
 20 A. Whatever come out of their factory sewer I
 21 guess.
 22 Q. But you don't know what it was?
 23 A. No, I have no idea.
 24 Q. Illinois Tool Works?

1 A. What?
 2 Q. Illinois Tool Works.
 3 A. I'm not familiar with them at all.
 4 Q. Goodyear?
 5 A. No. Where are they located?
 6 Q. I'm not clear if they had a manufacturing
 7 facility or if they were individual
 8 Goodyear Tire franchises. Sometimes all I
 9 have is a name. I don't have a listing
 10 here.
 11 MS. ESTES: Go off the record
 12 for just a second.
 13 (Off the record.)
 14 Q. [REDACTED], I have a couple of service store
 15 listings for Goodyear, but I also have a
 16 warehouse --
 17 A. On Cherry?
 18 Q. No, this is on Lexington -- and a wholesale
 19 sales department on Madison and 10th. Do
 20 either of those ring a bell for you?
 21 A. Madison and 10th, I think they're gone from
 22 there. The other one I don't know.
 23 No, it doesn't ring a bell. If
 24 anything they were just sales places. I

1 doubt if they did any manufacturing or
2 anything there.
3 Q. Inland Chemical?
4 A. Where are they at?
5 Q. I had a reference to Bush Street. Let me
6 see.
7 A. Bush, I'm trying to think of where Bush
8 Street is at. Gees, I haven't been around
9 there for a while. Bush, Bush, Bush, Bush,
10 sounds familiar, but.
11 Q. It's not in here. Excuse me, there it is,
12 1120 Bush Street.
13 A. 1120 Bush. I'm trying to place Bush
14 Street. I can't.
15 Q. You don't really remember?
16 A. No.
17 Q. Incorporated Crafts, Inc.?
18 A. No.
19 Q. Koppers, K-o-p-p-e-r-s?
20 A. Sounds familiar, but I can't place them.
21 Q. Toledo Scale?
22 A. That one I know.
23 Q. What do you know about Toledo Scale?
24 A. Other than the fact they manufactured

1 scales I never had much to do with them,
2 never made any deliveries or anything.
3 Q. Do you know anything about their waste
4 disposal practices?
5 A. No.
6 Q. Sherwin-Williams?
7 A. They didn't have a plant or anything here,
8 did they? I don't think so.
9 Q. Okay, any of the hospitals, do you know
10 anything about their waste disposal
11 practices?
12 A. No. All I know is over the recent years
13 they've changed their disposals to
14 containers and they deliver them or are
15 delivering them to disposal plants. That's
16 about the extent of it.
17 Q. Plabell Rubber?
18 A. Plabell Rubber, they're over on St. Clare
19 Street. I don't know what they do with
20 their waste there. I never really looked
21 into them.
22 Q. American Propeller or Teledyne?
23 A. That was mostly a government restricted
24 operation there. I wouldn't know too much

1 about them. I used to know a fellow that
2 worked there, but I haven't seen him
3 lately.
4 Q. Do you know what his name was?
5 A. [REDACTED]
6 Q. Do you know where [REDACTED] lives?
7 A. I don't know where he lives now, I really
8 don't.
9 Q. [REDACTED]?
10 A. [REDACTED]
11 Q. Surface Combustion Company?
12 A. The only thing -- I've known that plant.
13 It's not too far from where I live.
14 They at one time intended to burn
15 hazardous waste there. They were going to
16 set up a plant, but Surface Combustion is
17 out of business now or they moved, one or
18 the other.
19 Q. Well, we're talking about landfills that
20 operated in the '50's and '60's.
21 A. I don't know at that time where they would
22 be taking it really. If anything, if they
23 had enough of it, they'd use a common
24 carrier.

1 Q. U.S. Reduction?
2 A. I don't know too much about that one. Did
3 they manufacture aluminum or melt aluminum?
4 You know, I think that's what they did.
5 Q. Some type of foundry.
6 A. Yeah. Well, they used to, I made
7 deliveries there. If I'm not mistaken they
8 shipped molten metal, molten aluminum, but
9 that's about all I know for them.
10 Q. They shipped it where?
11 A. Well, they shipped it in containers that it
12 was melted, it was liquid you might say, to
13 the different foundries that used aluminum.
14 Q. Would that have been locally in Toledo?
15 A. Could be almost anywhere.
16 Q. The aluminum would stay liquid?
17 A. Well, they had two round tanks on the truck
18 that were highly insulated and they would
19 put the aluminum there in the tanks and
20 deliver them to the different foundries.
21 Q. Do you know anything about their waste
22 disposal?
23 A. No. They probably used the Stickney Avenue
24 Dump or the other one there because they're

1 close to that, but whether they did or not
2 I can't say.
3 Q. Perstorp?
4 A. Perstoff?
5 Q. Maybe. I have P-e-r-s-t-o-r-p, but the
6 name may not be right.
7 A. I've heard the name, but I don't recall
8 what they do.
9 Q. DeVilbiss?
10 A. DeVilbiss, that was a spraying operation.
11 They made spray guns. They're located over
12 on, off of Detroit.
13 I don't know too much about them. We
14 never did much business with them.
15 Q. The University Of Toledo?
16 A. That I don't know. All I know is they had
17 trouble one time. They stored some
18 radioactive material in the wrong place or
19 they didn't know they had it, but that's
20 about all I know about them.
21 Q. You know nothing else about their waste
22 disposal?
23 A. No.
24 Q. Acklin Stamping?

1 A. I don't know too much about them.
2 Q. [REDACTED]
3 A. Seems to me I did. I'm not sure now. I
4 [REDACTED]
5 Q. Do you know anything about their waste
6 disposal?
7 A. No.
8 Q. City Auto Stamping?
9 A. Don't know too much about them. We did
10 make deliveries there, but I don't know
11 about their, other than what they did and
12 so forth.
13 Q. Bunting Brass & Bronze Company?
14 A. That's been out of business for quite a
15 while. I don't know about their operation.
16 We never had much to do with them or I
17 didn't really.
18 Q. Continental Aviation & Engine Corp.?
19 A. No, not a thing about them either.
20 Q. Unitcast Corporation?
21 A. Unitcast, I really don't know what kind of
22 waste problem or anything they would have
23 because they made castings. They were over
24 on Front Street.

1 I've been there. I think we did
 2 business with them. I watched some of
 3 their operations, but I wouldn't know
 4 anything about their waste. I don't know
 5 what kind of waste they would really have
 6 there.
 7 Q. Okay, and you have no idea where they might
 8 have disposed of that waste?
 9 A. No.
 10 Q. [REDACTED], did you live close to either the
 11 Stickney --
 12 A. No.
 13 Q. Excuse me -- Tyler --
 14 A. Yeah. No.
 15 Q. -- or Dura Landfills?
 16 A. I did live -- well, wait. I did live close
 17 to them when I was a young fellow, because
 18 [REDACTED] which is a
 19 [REDACTED]. In
 20 fact, when I was a kid I used to go out
 21 there, see.
 22 Q. Okay, but this was way before there were
 23 landfills in the area?
 24 A. Well, basically that whole area was a dump

1 out there, both sides of the river, see.
 2 Where Dura is and them other places they
 3 had dumps all over there.
 4 They even had a dump on Buckeye and
 5 Central, a huge dump there that very few
 6 people know about. There used to be a
 7 paint factory up on the hill and there was
 8 a huge pond below and they dumped
 9 everything into that. Whatever was there
 10 to dump they dumped it there.
 11 A lot of people don't know about that
 12 dump because it's covered. It was huge a
 13 pond at one time and it was totally filled
 14 in with trash and that.
 15 Q. And paint?
 16 A. Paint, the factory was right next to it.
 17 The factory was tore down a long time ago.
 18 Q. But the information I have is that the
 19 Tyler Dump was started in the early '50's
 20 and you were a grown man by that time?
 21 A. Right.
 22 Q. All right, so the Tyler Dump or the
 23 Stickney Dump had not started at a time
 24 that you lived close to those areas?

1 A. They were dumping in that area for years,
 2 before it even become a dump.
 3 Q. You mean a dump operated by the city?
 4 A. No, it was just a dump area, period. They
 5 had a lot of places where there weren't
 6 dumps, the people just dumped stuff there.
 7 Q. Okay, do you remember companies dumping in
 8 either of these dumps?
 9 A. No, that was a way, way time.
 10 Q. Too far back?
 11 A. Well, they used to dump the mash and that
 12 from making whiskey and stuff out there.
 13 That's how far back it goes. They used to
 14 bootleg and they used to dump the mash and
 15 everything out there.
 16 There used to be a big, oh gees, it
 17 must have been a 10-foot pipe that ran into
 18 the Ottawa River where everything flowed
 19 through that. There was everything at one
 20 time before they had sanitary sewers this
 21 stuff used to go in there.
 22 Q. Do you know of any chemicals that were
 23 dumped in Stickney and Tyler or any
 24 companies in the areas that later became

1 Stickney and Tyler Landfills?
 2 A. There was no restriction on anything dumped
 3 there. In other words whatever somebody
 4 wanted to dump there they dumped it.
 5 Q. Okay, but do you have any specific
 6 information about who, what, when?
 7 A. No. At that time all they had was those
 8 pickup trucks and that and they used to
 9 just take it and dump it out there.
 10 Q. Sir, is there anything more that you could
 11 [REDACTED] that
 12 you haven't already told me?
 13 A. Other than the operation that it was when I
 14 was there. Now, if I recall they had a
 15 treatment plant at the refinery and most of
 16 the waste that we had there, the drainage
 17 and everything, would go to this treatment
 18 plant, and after they treated it it would
 19 go into the Maumee River.
 20 Q. Was discharged directly into the Maumee?
 21 A. After it was treated.
 22 Q. No, I understand that, but what was, after
 23 it was treated it was, whatever was left
 24 over was discharged directly to the river?

1 A. Yeah. Now, to get the sure thing on that
 2 if you could get some of the people that
 3 worked there they would know more about it
 4 than I did.
 5 See, the operation that I used to go
 6 over there and deliver stuff because they
 7 used it for their operation, but I didn't
 8 really know that much about the refinery
 9 itself because there was two separate
 10 operations there.
 11 Q. Okay, and you don't know anybody, can you
 12 identify anybody that worked at the
 13 refinery operation?
 14 A. Oh, yeah, I can. There was -- in fact I
 15 just left the [REDACTED].
 16 Q. Okay, so who's still around?
 17 A. Well, if you would give me a little time
 18 I'll talk to some of these people first and
 19 possibly they will give information more so
 20 than I could give you on the refinery. The
 21 only thing I could give you is the
 22 terminal.
 23 Q. Can you give me names of anybody that
 24 worked at the refinery?

1 A. Well, I don't know if I could really
 2 basically. If you were to inquire with
 3 them about anything I would have to ask
 4 them first if they would be willing, see.
 5 Q. Okay, I have the legal authority to ask you
 6 that question.
 7 A. Yeah, I understand that. I have been
 8 involved in this hazardous waste treatment
 9 and everything in this area fighting these
 10 people for, oh, it's going on about sixteen
 11 years. So I've dealt with it and
 12 everything and I'm willing to testify
 13 because I am very aggravated about the
 14 situation in this area, what we've got.
 15 Q. Sir, it would be real helpful to us if
 16 there were some additional people that you
 17 can identify.
 18 A. I will talk to them and if they want to,
 19 you know, give information, I will let you
 20 know. I will do that.
 21 See, I know a couple of them will
 22 probably do it because the one fellow he's
 23 been with our group fighting this hazardous
 24 waste in this area now, but, see, some of

1 these people are old people and some of
2 those old people are very sensitive about
3 things.
4 Q. I understand that.
5 A. You could understand what I'm dealing with
6 here.
7 Q. We're going out to a gentleman's house
8 tomorrow to try to be sensitive to his
9 situation. We try to really bend over
10 backwards for witnesses, make it as easy as
11 possible for them to tell their stories.
12 A. Well, I will contact some of these people
13 and I'm sure you'll get cooperation from
14 them. I'll let you know who they are.
15 I will do that because I am willing to
16 go to almost any extreme to get some of
17 these people that created these problems
18 for us.
19 Q. Is there anything else that you can tell me
20 about Matlack or about any of the other
21 common carriers that you haven't already
22 said?
23 A. I don't know what the law requires on them
24 keeping records, but they would have a

1 billing for each one of their deliveries
2 and if, how long they were required to keep
3 them or what I don't know, but I billed all
4 of these, a lot of these, not the hazardous
5 waste stuff but these trucks, so I know
6 that they have to have a record of each
7 delivery.
8 Q. Well, actually the product that you sold
9 isn't necessarily the problem because if
10 that was used for heating or in a
11 manufacturing operation that's not the
12 problem. The problem became what they did
13 with their, what would happen to the
14 various factories' waste and, you know,
15 what the relationship might have been
16 between the common carriers and
17 transporting waste to the landfill.
18 A. They would still have to have a billing for
19 that delivery. Regardless of what they
20 hauled, it would have to specify on that
21 billing what they were hauling.
22 Q. I don't, I think that given the length of
23 the passage of time it's going to be
24 difficult to come up with records. That's

1 why I have asked, always asked you if you
2 could identify individuals.
3 A. I've been separated from them for going on
4 twelve years now. See, a lot of them died.
5 They're gone because they were old at that
6 time, some of them, and I would say that
7 the two major haulers of that in this area
8 would be Matlack and RT&T. Now, I don't
9 know, Leaseway has got RT&T now.
10 Q. Lease?
11 A. Leaseway. Do you know where their garage
12 is?
13 Q. No, sir.
14 A. Well, the one garage for RT&T and Leaseway
15 there is on Route 2 right across from the
16 Sun Refinery and Matlack is on I think it's
17 Drouillard Road. Now, I doubt if any of
18 those drivers would even have any
19 connection with them anymore.
20 Q. Well, we can maybe ask our civil
21 investigator to see if he can come up with
22 somebody.
23 Is there anything else about either
24 the Stickney or the Tyler Landfills that

1 you haven't told me that you'd like to tell
2 me?
3 A. Well, the only thing that I could say is
4 those dumps, in other words, years ago you
5 had an open area, somebody would start
6 dumping stuff there because nobody was
7 watching it, and then eventually they would
8 just make a dump out of it, see. This is
9 how a lot of these dumps started around
10 here.
11 I was telling you about Dura Landfill.
12 Now, that would be on the north side of the
13 river. On the south side of the river
14 those houses that are built there are
15 standing on all that.
16 There was one huge dump there and they
17 built those houses on those dumps. See, if
18 you were to dig down into the ground far
19 enough you'd get all that garbage and
20 everything still there.
21 Q. Do you know what street that that might be?
22 A. Mont Royal would be one of them, Mont Royal
23 Street, and that whole area from, let's
24 see, from Lagrange Street, it would be from

1 Lagrange because the cemetery was on the
2 west side of Lagrange Street, all the way
3 up to Stickney and that whole area where
4 that Ottawa River flows was all dump area.
5 Q. What time period are you talking about now?
6 A. Oh, I'm talking in the '30's.
7 So the stuff that was dumped there,
8 like I say, there was no restrictions at
9 all what they dumped there. They dumped
10 paint and chemicals and anything.
11 Q. Okay, unless you can think of anything else
12 to tell me I think we're about ready to
13 wrap up.
14 A. Other than the other dumps and you're only
15 interested in Stickney and that. Of
16 course, you know, it's there used to be a
17 big dump over on Wheeling and Consaul and
18 they dumped a lot of hazardous waste there.
19 Q. I'm also familiar with the Western Avenue
20 Dump.
21 A. That one there, and there was a King Road
22 Dump which now the King Road Dump my
23 neighbor used to collect money for them
24 bringing stuff in to that dump and I talked

1 to him about it and that and he claims
2 there was no restriction on what they
3 dumped there either.
4 Q. What's your neighbor's name?
5 A. [REDACTED]
6 Q. Do you know what his address is?
7 A. [REDACTED] He is an old, old man. I
8 don't know what his memory would be, but I
9 talked to him about it right along, you
10 know, over the years I've talked to him,
11 and there were no restrictions at all
12 there. He never questioned what they
13 brought there or anything, he wasn't
14 supposed to. He just collected the money.
15 MS. ESTES: [REDACTED] I think
16 we're finished this afternoon. Thank
17 you very much. I appreciate it.
18 THE WITNESS: You're welcome.
19 (Whereupon, the deposition was
20 concluded at 5:30 p.m.)
21 [REDACTED], do hereby certify
22 that I have read the foregoing
23 transcript of my deposition given on
24 November 30, 1994, and that

1 together with the correction page
2 attached hereto, noting changes in
3 form or substance, if any, it is true
4 and correct.
5
6
7
8

9 DATE _____
10

11 C E R T I F I C A T E

12 STATE OF OHIO }
13 COUNTY OF LUCAS } SS.

14 I, Philip H. Gaines, a Notary Public in
15 and for the State of Ohio, duly commissioned and
16 qualified, do hereby certify that the within-
17 named witness, _____ was by me first
18 duly sworn to tell the truth, the whole truth,
19 and nothing but the truth in the cause aforesaid;
20 that the testimony then given by him was by me
21 recorded on audio cassette in the presence of
22 said witness, afterwards transcribed upon a word
23 processor, and that the foregoing is a true and
24 accurate transcription of the testimony so given

1 by him as aforesaid.

2 I do further certify that this deposition
3 was taken at the time and place in the foregoing
4 caption specified and was completed without
5 adjournment.

6 I do further certify that I am not a
7 relative, counsel, or attorney of any party or
8 otherwise interested in the event of this
9 action.

10 IN WITNESS WHEREOF, I have hereunto set
11 my hand and affixed my seal of office at Toledo,
12 Ohio, on this _____ day of December, 1994.
13

14
15 PHILIP H. GAINES
16 Notary Public
17 in and for the State of Ohio.

18 My Commission expires February 1, 1998.
19
20
21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF

CS-29A

December 27, 1994

Klaus M. Belohoubek
Vice President--General Counsel
Matlack, Inc.
One Rollins Plaza
P.O. Box 8789
Wilmington, DE 19899

Re: Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")

Dear Mr. Belohoubek:

This letter is in response to your letters of June 14, 1994 and August 3, 1994, in which you requested that U.S. EPA drop Matlack, Inc. as a PRP at the Sites on the basis on information provided to date.

While U.S. EPA will certainly take into account any alleged inconsistencies in Mr. Sherman's statements before issuing any mandatory orders to Matlack to become involved in any Site cleanups, U.S. EPA regrets that it will not be able to honor your request to have Matlack removed from the Stickney/Tyler PRP list. Because our PRP investigations are always on-going, and because the Agency expects to be involved at the Sites for an extended period of time, it would be very resource-intensive for U.S. EPA to investigate, at any given point in time, the evidence with regard to one of many PRPs that may have been implicated at the Sites, to determine whether at that "snapshot" time, there is sufficient evidence to warrant a particular entity's listing as one of the potentially responsible parties at the Site.

I spelled out potentially responsible parties intentionally, because I wanted you to focus on just what the Agency has done in naming Matlack as a PRP. Matlack's inclusion on the PRP list means only that the Agency has found that there is some evidence that Matlack might be liable at the Sites, not that we now have sufficient evidence to issue to Matlack a unilateral administrative order, or to meet the standards of the Federal Rules of Civil Procedure and file a cost recovery lawsuit against Matlack under § 107 of Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA).

Klaus M. Belohoubek
Matlack, Inc.

December 27, 1994

Page - 2 -

Region V practice is to notify PRPs of their potential involvement as early as practicable in the PRP search process. That way, they can monitor the progress of the administrative procedure, and assess their position vis-a-vis the Agency. Most entities, although obviously not Matlack, appreciate the opportunity to get somewhat of a "heads-up" on Agency plans. However, Region V will not change its practice because of the objections of one PRP.

I hope that this letter explains something to you about Region V procedures regarding PRP lists. Although you may not agree with the substance of the decision, I hope that you will agree that Region V's practice is a reasonable means of meeting the Agency's statutory goals under CERCLA.

Sincerely,



Sherry L. Estes
Assistant Regional Counsel

cc: Beth Reiner
Tom Barounis
Marsha Adams
~~Alan Margolis~~, OGC



matlack, inc.
pipeline on wheels®

ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

June 26, 1995

TELECOPY AND
CERTIFIED - RETURN
RECEIPT REQUESTED

Sherry L. Estes, Esquire
Assistant Regional Counsel
U. S. Environmental Protection
Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: **Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")**

Dear Ms. Estes:

This is to follow up on my letter to you dated June 22, 1995 (an additional copy of which is attached).

Because I found your allegations so unbelievable, I arranged to visit Larry Sherwin in person the following day.

I showed him the notes of the U.S. EPA investigator which read in part: "Waste from Matlack Co. on East side of Toledo would be picked up and brought to dump."

Once again, as he did in June of 1994, Mr. Sherwin denied ever having made such a statement. He put that in a second affidavit for me. He also reaffirmed the contents of the first affidavit which he signed for me in June of 1994. A copy of both affidavits is attached. To

Sherry L. Estes, Esquire
Page 2
June 26, 1995

further corroborate what he had told me, Mr. Sherwin also handed me yet another affidavit which he signed May 24, 1995 for Vallet Paint. A copy of this affidavit is also attached.

All three affidavits directly conflict with the notes of your investigator.

Perhaps your investigator was mistaken. Perhaps you should investigate the manner in which your office conducts interviews before accusing me or others of unethical conduct. I would add that Mr. Sherwin had less than flattering remarks to make about the manner in which he was interviewed by U.S. EPA during a period when he was in and out of the hospital with a number of life threatening ailments.

Mr. Sherwin also makes abundantly clear in his second affidavit for me that I did not coerce him in any way. If you have met Mr. Sherwin, I am sure that you will agree that he is not the type to sign a statement he does not agree with.

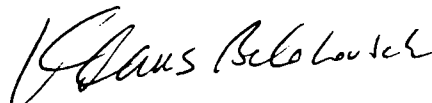
I would like you to do two things.

First, I would like you to send me a written apology.

Second, I would like you to drop Matlack as a PRP at this Site. This is not as unusual a request as you seem to believe. U.S. EPA has done this before when warranted. Please refer to the attached letter dated September 30, 1994 from Jeanne M. Fox, Regional Administrator, Region II, relative to another Site at which Matlack was improperly named a PRP, but later dropped.

As with my prior correspondence, I would ask that you make this letter a part of the administrative record. Thank you.

Sincerely yours,



Klaus M. Belohoubek
Vice President - General Counsel

KMB/gmh

Attachments

1900

AFFIDAVIT

I, LARRY SHERWIN, do certify as follows:

1. Attached is an affidavit which I executed on June 8, 1994, (the "1994 Affidavit"). It is based on several conversation I had with Klaus M. Belohoubek, Vice President - General Counsel to Matlack, Inc. At that time, Mr. Belohoubek asked me to carefully review the 1994 Affidavit to make sure that I agreed with what it stated. He also offered to make any necessary additions, deletions or corrections before I signed it. I had no changes to make to it since it was an accurate portrayal of the facts. To the best of my knowledge, the 1994 Affidavit is still an accurate portrayal of the facts.

2. Mr. Belohoubek did not pay me for signing the 1994 Affidavit, nor did he coerce me into signing the 1994 Affidavit in any way. I did so of my own free will. Mr. Belohoubek was polite and respectful at all times. When he phoned me yesterday, I recalled having spoken to him previously and agreed to meet with him the following day in order to sign this affidavit.

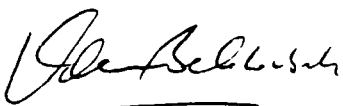
3. I never told U. S. EPA that the 1994 Affidavit had any errors in it. It does not.


4. I never told U.S. EPA that I dumped Matlack waste at the Stickney Avenue Landfill or Tyler Street Dump (the "Sites"). I did not. If any statement attributed to me has this information in it, it is incorrect. U. S. EPA had me sign a number of lengthy statements. I tried to correct what I could, but I may have missed something.

5. I am signing this affidavit voluntarily. I stand to gain nothing from signing it. I am simply doing this to correct any misimpressions that people may have. I am not aware that Matlack has any connection to the Sites.

Executed this 23rd day of June, 1995, in Toledo, Ohio.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.

Witnessed: 
Klaus M. Belohoubek, Esq.


Larry Sherwin

6-23-95

AFFIDAVIT

I, LARRY SHERWIN, do certify as follows:

1. I worked as a driver for Vallet Paint Company ("Vallet Paint"), located on Adams Street between the years of 1963 to 1965 and again between the years of 1968 to 1970.

2. Matlack, Inc. ("Matlack") was a customer of Vallet Paint. Matlack was one of many customers of Vallet Paint for whom I handled deliveries. On occasion, I would deliver cans of paint to customers of Vallet Paint, including Matlack. On occasion, I would also deliver sixteen (16) gallon or fifty-five (55) gallon drums to customers of Vallet Paint, including Matlack. I am not sure what the drums contained, but believe that they contained some form of solvent. I do not recall how often I made deliveries to Matlack, nor do I recall with any specificity, what I delivered to Matlack.

3. In connection with my deliveries to various customers, I would on occasion pick up empty drums from those customers. On occasion, there would be some residue of material left in these drums. As the drums were sealed, I have no way of knowing what the residue might have been. I believe that on occasion I picked up empty drums from Matlack. I do not recall how often this would have occurred or whether there was any residue in any of these drums.

4. Any drums picked up from customers, including Matlack, were returned directly to Vallet Paint. I did not take drums or any other materials from Matlack to the Stickney Avenue Landfill or Tyler Street Dump. I did not take drums or any other materials from Matlack to the Dura Avenue Landfill.

5. As part of my duties, I would ultimately take Vallet Paint trash to various dumps in the area. I have no way of knowing if any drums collected from Matlack or any other customer went to any particular dump or site, or whether such drums had any residue in them.

Executed this 8 day of June, 1994, in Toledo, Ohio.

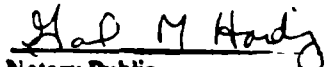
I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.


Larry Sherwin

Sworn to and subscribed to

me this 8th day of

June A.D. 94


Notary Public

AFFIDAVIT OF LARRY SHERWIN

STATE OF OHIO)
)ss:
COUNTY OF LUCAS)

I, Larry Sherwin, being first duly cautioned and sworn, state as follows:

1. I was employed at Vallet Paint Service Company ("Vallet Paint") located at 1808 Adams Street, Toledo, Lucas County, Ohio from approximately 1963 to 1965, and again from approximately 1968 to 1970. During my employment with Vallet Paint, I held the position of delivery driver.

2. The duties and responsibilities associated with the position of delivery driver included making deliveries, doing routine cleaning work, and hauling waste materials generated by Vallet Paint. I would frequently deliver cans of paint to customers. From time to time, I would deliver sixteen (16) gallon and fifty-five (55) gallon drums to customers. I believe the drums contained some form of solvent.

3. From time to time, I would pick up empty drums on my delivery runs. I would bring the drums back to Vallet Paint, and the drums would be stored behind the garage. On rare occasions, the drums would have some minor amounts of residue in them. I do not know what the residue might have been, nor do I know how often this would have occurred.

4. As a result of my employment with Vallet Paint, I became extremely familiar with not only the nature and amount of waste materials generated by Vallet Paint, but with the handling and disposal of those waste materials by Vallet Paint as well.

5. Specifically, the waste materials generated by Vallet Paint consisted almost entirely of empty five (5) gallon paint cans containing minor amounts of paint residue, empty paint thinner cans containing only minor amounts of thinner residue, empty cardboard boxes and paper materials.

6. The empty paint cans and thinner cans generated by Vallet Paint were the main byproducts of the paint mixing process. If a customer needed a certain color of paint, usually two or more different colors would have to be mixed together, sometimes with thinners, in order to obtain the desired result. When the paints were mixed, the paint cans would be tilted upside down and drained so as to avoid wasting any paint whatsoever. Thus, empty paint cans and thinner cans containing minor amounts of paint and thinner residue were the natural result of the paint mixing process.

7. The cardboard boxes disposed of by Vallet Paint were, for the most part, the shipping boxes for the cans of paint and thinner purchased by Vallet Paint.


8. Except to the extent that Vallet Paint's waste materials contained empty paint cans and thinner cans with only minor amounts of residue in them, as previously mentioned in paragraphs 5 and 6 above, during my employment with Vallet Paint, I never transported paints or thinners from Vallet Paint to the Dura Avenue Landfill ("Dura") or the Stickney Avenue Landfill/Tyler Street Dump (the "Stickney/Tyler Facility") for disposal. To the best of my knowledge, information and belief, paints and thinners were never disposed of at Dura or the Stickney/Tyler Facility by Vallet Paint.

9. During my employment with Vallet Paint, I never transported fifty-five (55) gallon drums, empty or otherwise, to Dura or the Stickney/Tyler Facility for disposal. To the best of my knowledge, information and belief, fifty-five (55) gallon drums, empty or otherwise, were not disposed of at Dura or the Stickney/Tyler Facility by Vallet Paint. To the contrary, any empty drums which accumulated were usually sold to local drum recycling firms.

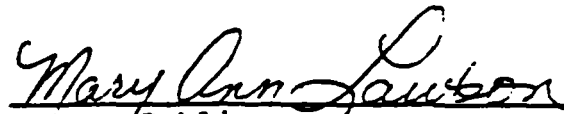
10. During my employment with Vallet Paint, I never picked up waste materials from any Vallet Paint customer and hauled them to Dura or the Stickney/Tyler Facility for disposal. To the best of my knowledge, information and belief, Vallet Paint neither instructed nor permitted its delivery drivers to pick up waste materials from any of its customers and haul them to Dura or the Stickney/Tyler Facility for disposal.

11. I am no longer employed by Vallet Paint and do not stand to gain in any way, financially or otherwise, as a result of my giving this statement.

FURTHER AFFIANT SAYETH NAUGHT.


Larry Sherwin

Sworn to before me and subscribed in my presence this 24th day of May, 1995.


Notary Public

H:\m\0606945.af

MARY ANN LAWSON
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 28, 1997



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

JACOB K. JAVITS FEDERAL BUILDING

NEW YORK, NEW YORK 10270-0012

SEP 30 1994

CERTIFIED MAIL --
RETURN RECEIPT REQUESTED

Klaus M. Belohoubek, Esq.
Assistant General Counsel
Matlack, Inc.
One Rollins Plaza
P.O. Box 8789
Wilmington, DE 19899

Re: Sealand Restoration Site, Lisbon, New York

Dear Mr. Belohoubek:

On August 18, 1993, an Administrative Order, Index No. II-CERCLA-93-0213 (hereinafter, the "Order"), was issued to Matlack, Inc. ("Matlack") and several other Respondents by the U.S. Environmental Protection Agency ("EPA") pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606(a). Under the terms of the Order, the Respondents to the Order were instructed to conduct a removal action at the Sealand Restoration Superfund site (the "Site") in Lisbon, New York.

Since the issuance of the Order, EPA has reviewed information obtained relating to Matlack, including the claim which you reiterated in your letter dated August 24, 1993, that the materials which Matlack arranged to be disposed of at the Site fall within the "petroleum exclusion" set forth in Section 101(14) of CERCLA. More specifically, you have asserted that the materials which had been disposed of at the Site, namely liquid waste and contaminated soil related to a spill of "No. 6 fuel oil", were not hazardous substances, as defined in Section 101 of CERCLA. On the basis of this information, you have requested that the Order be withdrawn as to Matlack because of its claim that it is not a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), with regard to the Site.

In light of the information submitted to EPA, we have concluded that the Order should be withdrawn as to Matlack. This letter constitutes such a withdrawal, and is effective immediately.

EPA reserves the right to reinstate the Order as to Matlack should we obtain new and/or additional information which

2

indicates that doing so would be appropriate. Further, should such information be revealed, we reserve the right to bring an action against Matlack pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for recovery of any response costs incurred by EPA in connection with the Site. We also reserve the right to take any enforcement actions against Matlack which we deem appropriate under the circumstances pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), or under any other provision of law.

Finally, notwithstanding this letter, the Order retains its full force and effect as to the other Respondents of the Order.

If you have any question regarding this matter, you may contact James Doyle of the Office of Regional Counsel at (212) 264-4472.

Sincerely,


Jeanne M. Fox
Regional Administrator

cc: Michael O'Toole - NYSDEC



ONE ROLLINS PLAZA, P.O. BOX 8789, WILMINGTON, DE 19899 / 800-MATLACK

June 27, 1995

TELECOPY AND
CERTIFIED - RETURN
RECEIPT REQUESTED

Sherry L. Estes, Esquire
Assistant Regional Counsel
U. S. Environmental Protection
Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: **Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")**

Dear Ms. Estes:

This is to follow up on your letter to me dated June 23, 1995. Your letter was intended as a partial response to my FOIA request of May 19, 1995. Attached to your letter is a single item - a transcript of a deposition taken on November 30, 1994 of a former employee of Gulf Oil, Mr. John T. Radon.

Despite the fact that you focused a great deal of your interrogation on Matlack, none of Mr. Radon's responses in any way connect Matlack to the Sites. You did establish that Matlack is a common carrier and that it hauled product for Gulf. This is well known but has no relevance to liability at the Sites.

On pages 56 and 57 of the transcript, Mr. Radon responds as follows:

"Q: You never saw Matlack dump at the Dura Landfill?

A: No.

. . .

Q: Did you ever see anyone dump at the Stickney Landfill?

A: No."

Sherry L. Estes, Esquire
Page 2
June 27, 1995

Even if Matlack had hauled waste to the Sites as a common carrier, because Matlack policy has always been not to chose a disposal site, Matlack could have no liability under CERCLA due to the transporter exemption. I would be pleased to provide you with additional information on this exemption if you are not familiar with it. We have had occasion to look into this exemption several times in the past.

Far more disturbing is the exchange on page 41 of the transcript involving notes of your civil investigator, Mr. Frank Bolenze. You refer Mr. Radon to a statement in the notes of Mr. Bolenze's interview of Mr. Radon which indicate that Mr. Radon stated that Matlack took 8,000 gallon tankers to the Dura Landfill. Mr. Radon replied that, while driving on the Expressway near the Landfill, he saw R T & T, another carrier, delivering loads there but that he never saw Matlack there.

I have reason to believe that Mr. Bolenze is the same investigator that falsely alleged that Larry Sherwin told him that Matlack dumped waste at Stickney and that I obtained Mr. Sherwin's affidavit through coercion.

I trust that you will include in your response to my May 19, 1995 FOIA request any notes which Mr. Bolenze took in any of his interviews that in any way relate to Matlack. I would also like to see copies of any instructions given to him (including oral instructions that he may have written down) relative to the manner in which to conduct these interviews.

As with my prior correspondence, I would ask that you make this letter a part of the administrative record. Thank you.

Very truly yours,



Klaus M. Belohoubek
Vice President - General Counsel

KMB/gmh

1902



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

CS-29A

July 17, 1995

VIA TELEFAX AND CERTIFIED MAIL

Klaus M. Belohoubek
Vice President- General Counsel
Matlack, Inc.
One Rollins Plaza
P.O. Box 8789
Wilmington, DE 19899

RE: Stickney Avenue Landfill and
Tyler Street Dump (the "Sites")

Dear Mr. Belohoubek:

This letter is in response to your recent correspondence, the most recent dated July 13, 1994, and your Freedom of Information Act (FOIA) Request, dated May 19, 1994.

On June 23, 1994, I released to you a redacted version of one of the documents which is responsive to your May 19th FOIA request, and indicated to you that I needed time to complete U.S. EPA's search, there would probably be responsive documents in the possession of Region V civil investigators. Our completion of this search has taken longer than I originally anticipated, due to the nature of the civil investigators' job duties. They have been away from the office investigating other CERCLA matters, and, consequently, had not previously been able to perform a diligent search of documents which remained in their offices.

Several responsive documents are enclosed with the certified mail version of this letter. These documents include handwritten and typed versions of a statement given on October 25, 1994 by Larry Sherwin to U.S. EPA civil investigators. They also include a description of activities undertaken by the civil investigators on October 25th. This document has been minimally redacted to protect the name of a witness, whose identity would be unresponsive to the FOIA dated May 19, 1994.

In my June 23rd response, I also indicated that a denial of the unredacted version of the transcript would be forwarded under separate cover. In response to this letter, you addressed to me several letters dated June 26 and 27. The letter of June 27th

Klaus M. Beloboubek
Stickney and Tyler Sites
Toledo, Ohio

July 17, 1995

Page - 2 -

requests "any information which Mr. Bolenze took in any of his interviews that in any way relate to Matlack" (emphasis added), as well as "copies of any instructions given to him (including oral instructions that he may have written down) relative to the manner in which to conduct these interviews."

This request is considerably broader than the May 19th request, in which you sought "any additional information that in any way suggests that Matlack has a connection to these Sites . . . beyond what was provided in response to [Matlack's earlier FOIA lawsuit]." For this reason, U.S. EPA would be entitled to treat the June 27th request as a separate FOIA; however, since we have not, as of the date of this letter, sent a denial of the unredacted version of the deposition transcript provided to you on June 23rd, denials of written versions of the instructions (exempt from disclosure under FOIA as attorney work product and attorney/client communications, as well as FOIA Exemption 7(A)) will be forwarded at the same time, assuming that U.S. EPA management concurs in my initial determination.

With regard to this June 27th request, two additional items should be noted: The civil investigator's name, which, inadvertently, was not redacted in the deposition transcript sent to you, is misspelled in the transcript. Consistent with the Agency's position during the pendency of the earlier FOIA litigation between your client and U.S. EPA, we are not obliged to correct the inadvertently disclosed (and mistaken) identification contained here. Additionally, another investigator was present with "Mr. Bolenze" during this interview and the preparatory meetings; although that individual's name, similarly, will not be disclosed, I have interpreted your June 27th request to include the responsive notes of that individual.

Your June 26th letter renews your request for U.S. EPA to drop Matlack as a PRP at the Sites. As evidence that the Agency has honored similar requests, you enclosed a letter from Jeanne M. Fox, Regional Administrator, Region II, dated September 30, 1994. This letter, however, withdraws Matlack as a Respondent to a Unilateral Administrative Order (UAO) issued for the Sealand Restoration Superfund site, pursuant to Section 106 of CERCLA. The letter was withdrawn because the waste which Matlack sent to the site was determined to be within CERCLA's petroleum exclusion set forth in CERCLA Section 101(14).

Klaus M. Beloboubek
Stickney and Tyler Sites
Toledo, Ohio

July 17, 1995

Page - 3 -

The instant situation, and that involving the Sealand site, however, are highly dissimilar. There are no legal consequences to Region V's including Matlack as a party potentially responsible for the Stickney and Tyler sites. However, as a party Respondent to a UAO, Matlack's potential exposure for failure to comply with the UAO would be the \$ 25,000 per day statutory penalty set forth in Section 106(b) or the treble damages provision of Section 107(c)(3). In Sealand, moreover, Matlack's waste apparently would be within the CERCLA petroleum exclusion. In the instant case, if Matlack indeed sent used paint and paint cans to Stickney and Tyler, as stated in some of the affidavits signed by Larry Sherwin, the wastes would be hazardous substances, as defined by CERCLA. Additionally, in the September 20, 1994 letter, Region II retained the authority to re-instate Matlack as a party Respondent to the UAO, if additional evidence were to come to light. Thus, Region II, in essence, was doing exactly what I am doing now: continuing to investigate the potential liability of Matlack and numerous other parties.

Similarly, if I were to find that Matlack, as a common carrier, transported wastes to the site, I would not remove Matlack from the PRP list merely because of Matlack's assertions that it did not choose the disposal site. I would continue to investigate to determine, to the best of my ability, if those assertions were valid, or if there were evidence to the contrary which would render Matlack liable as a transporter under CERCLA. Based upon my experience with the Agency, very few companies initially admit to CERCLA liability (unless the evidence is overwhelming). If I were to drop every entity from a PRP list during the course of an ongoing investigation because of that entity's assertions, I would have few entities left to investigate. Under these circumstances, I cannot, at this time, honor Matlack's request to be deleted from the Stickney/Tyler PRP list.

You also have frequently expressed your desire for the placement of your correspondence in the Sites' administrative record. According to the Subpart I of the NCP, 40 C.F.R. § 300.800, the administrative record "contains the documents that form the basis for the selection of a response action." Our interchange of correspondence, however, has had nothing to do with the selection of response actions at the sites; rather, it was based upon whether or not Matlack is potentially liable for response costs. Thus, in Region V, liability evidence is routinely excluded from the administrative record. If you care

Klaus M. Beloboubek
Stickney and Tyler Sites
Toledo, Ohio

July 17, 1995

Page - 4 -

to comment about the selection of the response action at the Sites or any of the technical documents now part of the administrative record, I will be happy to add these to the record. However, discussions as to a party's liability/nonliability are not appropriately part of the administrative record, and I regret that I will not be able to honor your request in this regard.

Any other matters which you have raised in prior correspondence which have not been addressed in this letter will be discussed in subsequent correspondence. As stated previously, you should also expect the denials of responsive, but FOIA-exempt documents, under separate cover.

Sincerely,

A handwritten signature in cursive script that reads "Sherry L. Estes". The signature is written in dark ink and is positioned above the printed name and title.

Sherry L. Estes
Assistant Regional Counsel

Enclosures

cc: Diana Gountanis
Deborah Garber

10/25/94 7:45 am. CDT depart O'Hare

10:00 a.m. EDT ARR Toledo

PICK UP RENTAL CAR

CHECK IN HOTEL

{ 2:00 p.m. INTERVIEW LARRY STREWIN
2:45 p.m.

lunch. Chinese Restaurant

3:30 p.m. [REDACTED] Calls.

5:30 p.m. [REDACTED] ~~FOR~~ WRITE UP NOTES OF STREWIN inter

{ 7:30 MEET TO ESTABLISH PLAN ~~i.d. calls~~
8:00 ~~inter~~ i.d. calls with REQUEST for interviews

{ 8:00 p.m. phone calls and write ups.
10:00 p.m.

10/26/94 9:00 a.m. REVIEW RESULTS of calls / calls :

{ 10:00 a.m. INTERVIEW ROBERT

10:30 a.m.

10:30 a.m. call to Chet

{ 10:45 a.m. Survey of area
11:00 a.m. interview Steve [REDACTED]

11:45 a.m. Mrs. Ruff

{ 2:00 interview Linda [REDACTED]
2:40 June

{ 3:00 interview Mary
3:30

4:00 p.m. Richard
4:00 - 5:15 currier.

10/27/94

9:00 a.m. - Telephone call -

10:30 a.m. - WRITE-UPS

10:45 - 11:30 a.m. Interview Richard [REDACTED]

1:30 - 2:30 p.m. Larry Sherwin
~~Review interview with~~
Review statement, Sherwin's pgs

3:00 p.m. Toledo Public Library

7:00 p.m. Public Directories. Identify occupants
of street address in 1963 and 1964.

Review newspaper clippings
and files of public record.

Landfill One Site as well as St. Olney & Tyler.

9:20 - 10:00 p.m. Interview Donald [REDACTED]

Stickney AV Landfill
Tyler ST Dump
Toledo OH

DATE: October 25, 1994

Person Interviewed: Larry Sherwin
Address: 3250 Schneider RD
APT C23
Toledo OH 43614
Telephone: 419 389-1697

Site: Stickney-Tyler

Interview Conducted By: [REDACTED] Civil Investigator
[REDACTED] Civil Investigator

I, Larry Sherwin agree to clarify and to amplify statements that I made in an October 17, 1993 telephone conversation with Frank Boenzi.

I, Larry Sherwin, worked as a delivery driver for Vallet Paint beginning in 1963 (the year of my marriage). I worked full time as a delivery driver until late 1964 or early '65. I, Sherwin, then moved to California. I was in California from 1966 to late 1968.

As a delivery driver for Vallet Paint I drove a pick-up truck making approximately 135 deliveries a day and driving 150 miles per day. My route covered southern and eastern Toledo, Ohio together with adjacent communities such as Maumee, Maline and Milbury. I delivered paints, thinners solders. Vallet Paint shipped paint in containers ranging from 1/2 pint to a gallon or five gallon container. Occasionally Vallet Paint shipped thinners and solvents in 55 gallon drums. Vallet Paint shipped thinner in one or five gallon cans or in 16 or 55 gallon drums.

When I first worked for Vallet Paint it mostly delivered automotive paint to body shops. Vallet Paint also delivered industrial type finishes. Vallet Paint's customers were body shops, trucking companies (They painted their own trucks.) and manufacturers who used the industrial paints and finishes on their own products.

Customers would put used thinners and solvents in the 55 gallon drums in which Vallet Paint had shipped thinners. As a courtesy to large customers, Vallet Paint instructed its drivers to remove these drums when a customer asked a driver to do so. I don't know whether Vallet Paint charged its customers for picking up the discarded thinners and solvents. I did not handle any money or billing for these pick-ups.

The driver would take the drum back to the cyclone fence cage (which was) about 10' x 15' in the rear of the site of Vallet Paint. The driver would offload the drum and place it in [the] cage with other used drums and full drums of used thinners and solvents. Some of the drums returned by the customers contained solvents and thinners. I did not know how much would be in a drum. It varied. The amount of thinner or solvent could be very little or five or more gallons. When I moved a drum I could usually hear chemicals sloshing around in them.

I, Sherwin, state that Matlack had contacted me [last] summer (1993) and asked me to sign a statement that I had never taken chemicals from Matlack to the Stickney or Tyler dump site. The corporate legal staff at the headquarters of Matlack sent me the statement by registered/certified mail. The statement relieved Matlack of responsibility for dumping at the Stickney and Tyler dumpsites. I do not remember the name of the attorney, but I think it was German society.

I signed and returned the statement to Matlack. I might have a copy of the statement that I signed. I said that I had never taken anything from Matlack directly to either the Stickney or Tyler sites or to any other dumpsite, [or] discarded thinners paints or coatings. I did pick up from Matlack drums that I believe contained various chemicals in different amounts, but I always took these drums to the Vallet Paint yard where I placed the drums with other drums in the cage. As far as I know, there was no cost to Matlack for this pickup of used drums. About once a week, twice a week in the summer, one of the drivers would take a truckload of drums to the Stickney site or to the Matzinger site. The truck used to haul the drums to the dumpsite was a 3/4 ton Ford F-100 pick-up. All waste picked up from customers was brought to Vallet and ultimately taken to the dump site by Vallet as a customer courtesy.

It would have been impossible to take a discarded drum directly from a Vallet Paint customer to any dumpsite because of the length of the daily route and the number of stops, about 135 stops during a regular shift.

I am certain that waste thinners from Matlack ultimately went to the Stickney and Matzinger sites. The drums that the customers asked Vallet Paint to pick up were always returned to the cage in the yard and Vallet Paint always sent the drums in the cage to Stickney or Matzinger sites. Any chemicals in drums that Matlack asked Vallet Paint to haul away went to a waste site. Unless there was a defective product that Vallet Paint returned to DuPont. Whenever Matlack wanted drums moved away Matlack would ask a Vallet Paint driver to take the drum away.

No driver of Vallet Paint was assigned to take the to take the discarded drums to a waste site. Whichever driver was freewould do it. W#hen I worked for Vallet Paint it employed two full time and several part time drivers. Most of the part time help, including the drivers, were either fire or police officers. Vallet Paint had two trucks on regular runs and a third for short hops and emergencies.

When I took drums from Vallet Paint to the Stickney and Matzinger sites, I never talked to anyone. I would drive to the site. There was a shack near the entrance and usually there was a man in it. The man would see would see the Vallet Paint's truck and wave it through. I could not say with certainty that every time someone waved me into the landfill site, it was the same person or that the person was employed by the dump operator. At that time, 1963-65 and 1968, there were many scavengers hanging around the landfills.

The man in the shack would wave the truck to wherever the dumping was occurring. There was a bulldozer there and the waste would soon be covered over.

I, Sherwin, frequently saw Pinkerton dumping load after load of treated tobacco at Stickney and Matzinger. Pinkerton had a plant at Monroe and Detroit, behind Swayne Field. Pinkerton dumped a lot of discarded materials. The scavengers would immediately go through it. They would pick out cigars. I believe Pinkerton is still operating although under another name. I believe that it operates at the same location.

Vallet delivered a lot of paint to a small air freight outfit located near the municipal airport. This is Metcalfe Field.

I heard that DuPont discarded waste at the Stickney site. I never personally saw DuPont dumping waste at Stickney.

All the manufacturers and businesses dumped at the Stickney and Matzinger sites during the 1960s. If a business had stuff to dump, they dumped it there. In the 1960's no one shipped waste out of state as they now do.

I never took discarded drums to the Tyler site. When I was driving for Vallet Paint, The Tyler site did not take big waste, large hard objects. Mostly Tyler took soft stuff like leaves.

On a weekly basis, and twice a week during the summer, a Vallet Paint driver would take drums from the cage to a dump site. The drums contained not only used thinners returned by the customers, but waste paint or thinners. Other drums in the cage held paints that the mixing crew had mistakenly prepared, If the colors were mixed wrong or a little off, the mixer would discard the paint. The mixers never told the owners, Joe Vallet and Brian Hartley, about their mistakes. They would have blown up. The mixer just put the wrong stuff in big cardboard boxes in which empty cans were shipped. I never talked with anyone about these mistakes. As far as I know, no one talked about the mistakes. "Mum's the word." I didn't want to make any enemies on the job.

The part Timers worked for the fire or police department. I can remember:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I am willing to stand behind this statement that Vallet Paint hauled to Stickney waste paint and materials discarded by its big customers. These customers included Matlack. I never took anything directly from a customer to a dumpsite. The drivers took all the discards from big customers asked Vallet to haul away back to the cage in the Vallet Paint yard. From there at a later date Vallet Paint took the customers' discards and its own mistakes to the dumpsites.

I expect to be at home. During the summer I am usually home by 9:00 p.m. During the winter and in bad weather I am at home more. If I am in the hospital, I will be in the Toledo Hospital.

I have read the above and affirm that it is true to the best of my knowledge. Statement of eight [holographic] pages.

handwritten

[signed] L. Sherwin

10/27/94

Witnesses: [signed] [REDACTED] Civil Investigator 10/27/94
Name Date

[signed] [REDACTED] Civil Investigator 10/27/94
Name Date

Date: October 25, 1944

Person Interviewed: Larry Sherwin

Address 3250 Schneider Road

Apt C23, Toledo, OH

Telephone: (419) 389-1697

43614

Site: Stearns - Tyler

Interview Conducted by [REDACTED], Civil Investigator
[REDACTED], Civil Investigator

Q, Larry

~~The~~ Sherwin agreed to clarify and amplify statements that ~~had~~ made in an October 17, 1993 telephone conversation with Frank Boenig.

Q, Larry Sherwin worked as a delivery driver for Vallette Paint beginning in 1963 (the year of ~~Larry's~~ marriage). ~~He~~ worked full time as a delivery driver until late 1964 or early '65.
Q, Sherwin then moved to California. ~~He~~ I was in California from 1966 to late 1968.

As a delivery driver for Vallette Paint ^{L.S.} Sherwin I drove a pick up truck making approximately 135 deliveries a day and driving 150 miles per day. ^{L.S. My} route covered southern and eastern Ohio, Ohio together with adjacent communities such as ^{Marysville} ~~Marysville~~ ^{and} ~~and~~ ^{Delaware} ~~Delaware~~ delivered paints, thinners, solvents. Vallette Paint shipped paint in containers ranging from 1/2 pint to a gallon or five gallon containers. Occasionally Vallette shipped ^{thinners and solvents} ~~paint~~ in 55 gallon drums. Vallette Paint shipped thinners in one to five gallon cans or in 16 or 55 gallon drums. L.S.

L.S.

Stickney Ave }
Tyler St } Ste

2/8
1425/44

Sherwin Williams

L.S.

~~Sherwin said that~~ When he first worked for Vallit Paint, it mostly ~~shipped~~ ^{delivered} automotive paints to body shops. ~~Vallit Paint also shipped~~ ^{delivered} industrial type finishes. Vallit Paint's customers were body shops, trucking companies (they painted their own trucks) and manufacturers who used the industrial paints and finishes on their own products. ~~Sherwin particularly remembered~~ ~~making frequent deliveries to a manufacturer of air conditioners that was located in Holland, Ohio.~~

~~Sherwin said that~~ Customers would put used thinners and solvents in the 55 gallon drums in which Vallit Paint had shipped thinners ~~and occasionally~~ ~~paints~~. As a courtesy to large customers, Vallit Paint instructed its drivers to remove these drums when a customer asked a driver to do so. Sherwin ~~said that he had no knowledge~~ ^{didn't know} of whether Vallit Paint charged its customers for picking up or discarding thinners and solvents. Sherwin had ~~never heard of~~ ^{never heard of} any money or billing for these pickups. ^{could be} The driver would take the drum back to the ^{office} ~~area~~ of Vallit Paint. The driver would offload the drum and place it in a cage with other used drums. ^{Just drums, not used thinners and solvents} Some of the drums returned by the customers contained solvents and thinners. Sherwin did not know how much would be in a drum. It varied. The amount of thinner or solvent could be very little, or five or more gallons. When Sherwin moved ~~the~~ ^{the} drums, ~~he~~ ^{he} could ^{usually} hear chemicals sloshing around in them. L.S.

L.S.

Stickney AU } site 5/8.
Tyler ST } 10/25/94
Sherwin Int'l

L.S. State

I, Sherwin ~~state~~ that Matlack
had contacted ~~me~~ this summer (1993) and asked
~~him~~ me to sign a statement that ~~he~~ I had never
taken chemicals from ~~the~~ Matlack to the Stickney
or Tyler Street dump site. The corporate legal staff
at the ~~Stickney~~ ^{L.S.} headquarters of Matlack sent ~~me~~
Sherwin the statement by registered/certified mail.
The statement relieved Matlack of responsibility
for dumping at the Stickney and Tyler dumpsites.

I do not remember the name of the attorney, but I think it was Jensen ^{Esq.}

Sherwin said that ~~he~~ signed and returned
the statement to Matlack. ~~He also signed a statement~~
statement that ~~he~~ signed, ~~that~~ ^{L.S.} ~~he~~ that

~~he~~ had never taken anything from Matlack directly
to either the Stickney or Tyler sites or to any other
dump site. discarded thinners, paints or coatings.
~~Sherwin~~ ^{L.S.} picked up from Matlack drums that
contained various chemicals in different amounts
but ~~he~~ always took these drums to the Vallet
Point yard where ~~he~~ placed the drums with other
drums in the cage. As far as Sherwin knows,
there was no cost to Matlack for this pickup of used
drums. About once a week, twice a week in the
summer, one of the drivers would take
a truckload of drums to the Stickney site
~~or~~ to the Matzinger site. The truck used ^{L.S.}
to haul drums to the dumpsites was a ~~standard~~
^{1/4 TON} ~~pick-up~~ ^{Ford F-100} pick-up. All waste picked up from
customers was brought to Vallet and ultimately taken
to the dump site by Vallet as a customer courtesy.

L.S.

10/25/64

Sherwin Interview

~~Sherwin~~ said that it would have been impossible to take a discarded drum directly from a Vallit Paint customer to any dump site because of the length of the daily route and the number of stops ~~and~~ 135 during a regular shift.

15. ~~Sherwin~~ said that ~~he~~ ^{ultimately} certain that waste thinners from Matlock ~~went~~ to the Stuckney and Matzyer sites. The drums that the customers asked Vallit Paint to pick up ^{were} always returned to the cage in the yard and Vallit Paint always sent the drums in the cage to Stuckney or Matzyer sites. ~~Any~~ chemicals in drums that Matlock ~~returned~~ asked Vallit Paint to haul away went to a waste site. Unless there was a defective product that Vallit Paint returned to DuPont.

~~Sherwin~~ said ~~that~~ ~~Matlock~~ ~~always~~ ~~asked~~ ~~Vallit Paint~~ ~~to~~ ~~haul~~ ~~away~~ ~~the~~ ~~drums~~ ~~that~~ ~~Matlock~~ ~~wanted~~ ~~to~~ ~~move~~ ~~away~~. Whenever Matlock wanted to move away, ~~Matlock~~ would ask a Vallit Paint driver to take ~~away~~ ^{the} drum.

16. ~~Sherwin~~ said that ~~no~~ driver ~~at~~ of Vallit Paint was assigned to take the discarded drums to a waste site. Whichever driver was free would do it. When ~~Sherwin~~ worked for Vallit Paint, it employed two fulltime and several parttime drivers. Most of the parttime ^{help} drivers were either firemen or police officers. Vallit Paint had two trucks on regular runs and a third for short hops and emergencies.

L.S.

Stickney Tylersites, 57.
4/25/76
Sherwin Interview

I When ~~he~~ took drums from Vallit Point to the Stickney and Matzger sites, Sherwin never talked with anyone. ~~He~~ would drive to the site. ~~There~~ There was a shack near the entrance and usually there was a man in it. The man would see Vallit Point's truck and wave it through. ~~Sherwin said that~~ I could not say with certainty that every time someone waved ~~them~~ into the landfill site, it was the same person or ~~men~~ that the person was employed by the dump operator. At that time ~~#~~, 1963-65 and 1968, there were many scavengers hanging around the landfill.

The man in the shack would wave the truck to wherever dumping was occurring. There would be a bulldozer there and the waste would soon be covered over.

L.S. ~~Sherwin~~

~~Sherwin saw her~~
I, Sherwin frequently saw Pinkerton dumping load after load of treated tobacco ^{Stickney & Matzger} Pinkerton had a plant at Monroe and Detroit behind Swayne Field. Pinkerton dumped a lot of discarded materials. The scavengers would immediately go through it. They would pick out cigs. ~~Pinkerton~~ Pinkerton is still operating although under another name. Sherwin believes that it operates at the same location.

L.S.

Stuckney Tyler Site 6/8
Sherwin Interview 10/25/94

Vallit Paint delivered a lot of paint to ~~the~~
~~which was~~ a small air freight outfit located
near the municipal airport. This is, Petrolfe Field,

^{SD} Sherwin heard that DuPont discarded waste
at the Stuckney site. ~~He~~ never personally
saw DuPont dumping waste at Stuckney.
Jep Corporation, now Chrysler, dumped
at Stuckney.

L.S. ~~Sherwin said that~~ All the manufacturers
and businesses dumped at the Stuckney and
Nitrogen sites during the 1960s. If a business
had stuff to dump, they dumped it there.
In the 1960s, no one shipped this waste
out of state as businesses now do.

L.S. ~~Sherwin said that~~ I never took discarded
drums to the Tyler site. ~~But~~ when I was
driving for Vallit Paint, the Tyler site did not
take big waste, large hard objects. Mostly Tyler
took soft stuff like leaves.

On a weekly basis and twice a week during
the summer, a Vallit Paint driver would take
drums from the cage to a dump site. The barrels drum
contained not only used thinners returned
by the customers ~~but~~ ^{with some in them} ~~they also~~ Other drums in the
cage held paints that the mixing crew
had mistakenly prepared. If the colors were
mixed wrong or a little off, the mixers would
L.S.

2.5.

big cardboard boxes that
empty paint cans were
shipped in.

Stickney - Tyle Sets 110
Sherwin Interview. 10/25/94

Discard the paint. The misers never told
the owners Joe Vallet and Brian Hartley
about their mistakes. They would have blown up
the misers first put the wrong stuff in ~~the~~
~~big cardboard boxes that empty paint cans were~~
~~shipped in. The boxes to the cage to be discarded later.~~
Sherwin said that he never talked with anyone
about these mistakes. As far as he knew,
no one talked about the mistakes. "Mum's the
word." Sherwin didn't want to make any
enemies on the job.

2.5.

Sherwin said that the part timers worked
for the fire or police departments. ~~Sherwin could~~
remember: ~~_____~~

~~_____~~

2.5.

~~Sherwin~~ I am
behind ~~his~~ statement that Vallet Paint hauled
to Stickney waste paint and materials discarded
by its big customers. These customers
included Matlock. Sherwin never took anything
directly from a customer to a dumpsite. The driver
took all the discards that ~~its~~ big customers
asked it to haul away back to the cage in the Vallet
Paint yard. From there at a later date 2.5.

L.S.

Stickney - Tyka S. 8/8

10/25/94

Sherwin Interview

Vallet Paint took the customers' diccards and
its own mistakes to the dumpsters.

I expect to be home. During the summer
I am usually home by 9:00 p.m. During the winter
and in bad weather I am at home more. I am
in the hospital, I will be in Toledo Hospital.

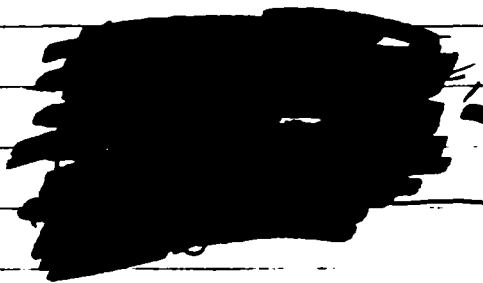
I have read the above and affirm that
it is true to the best of my knowledge, ~~Sherwin~~ ^{Statement of} ~~10/27/94~~

J. Sherwin

Name

10/27/94
Date

Witnesses:



Civil Investigator 10/27/94
Date

, Civil Investigator 10/27/94
Date

L.S.

Writeup '19 - '11'

10/25/94

(1)

Curry Sherwin

12/17/83 phone conversation

Delivery Driver for Valley
63 or 64

STARTED '63 (up of marriage)

until late '64 or early '65

Return from CA

driver PT time '68-'69

CA 66 to late '68

Delivered to body shops, factories

automotive ^{parts} and industrial type ~~paints~~ finishes

Fishing - no eating

paints, thinners, solder

scents 1/2 pt, gal, special

Thinners 1-5 gal 16 gal or 55 gal drum

Body shops, trucking companies,

Air conditioners off in Holland

6 Used products themselves

Mathel

If picked up nothing directly to dump

Empty a drum, put old thinners in.

Cage in back at Paint Valley barrels stored w/ thinners

Larry Sherwin 10/25/94
(2)

Two permanent drivers
3 or 4 part-time drivers

Another truck for short hops and emergencies

Pts from police or fire dept

Mattak was a customer of Valley Paint
delivered goods
picked up drums w/ liquid sloshing
thinners,
Every mo - 6 wks

South End, Maumee, Milbury
East Side

One of original owners died summer '93

As courtesy pick up empty drums

Drums from Vallet Trucking

Did - Fickney
Motsinger

Who talked to - Nobody

Drove in - Shock - just waved through.
Lots of scavengers hanging around dump

Municipal Airport

Delivered to Crow (Small freight outfit)

Saw Berkeston dumping load after load of treated
panels.

Larry Shuman 10/25/94
(3)

Out Post - head-umers

He didn't see Chrysler

Believed to somebody

Anybody approached you? atty Mat/ck. ^{Someone in DE}
let come from Home of. ^{Home of} col lawyer
Relieving Mat/ck of responsibility

Summer '94 Registered / Certified

Anybody else?

Cont. I.D. drivers -

Linker Tobacco. behind Swayne field
Monroe & Detroit

Other companies like de

Anybody who had stuff to dump.

Types were & taking big waste

Wally or Frank deciding summer
took mistakes

mean the word otherwise among
Briantley Joe Valler, would jump on.

Didn't want enemies

10/25/94 (4)
Larry Sherwin

Although didn't bring directly
ultimately delivered to dump.

Can you say this? Yes

Regular pickup.

Honover picked up most load
Lot 2 55 full drums.

Any charge? Greater, for big companies

Sold to DuPont which was located by the
Highway

Who else

[REDACTED]
[REDACTED] (SC)
[REDACTED]

[REDACTED]
[REDACTED]

Everybody dumped there. Then nobody shipped out of
the way they do now.

Ferry Sherwin

(5)

10/25/94

Willing to stand behind
Statement

"I sure will,"

Never told anything directly to the dump.

135 deliveries/day

150 mi/day

[REDACTED]

Toledo Hospital

AFFIDAVIT

I, Larry Sherwin, do certify as follows:

1. I have executed several statements and affidavits relating to my employment at Vallet Paint Service Co. ("Vallet Paint") and my activities as a driver making deliveries to various customers and to various disposal sites (the "Sites") in the Toledo area, namely the Dura Landfill ("Dura"), the Stickney Avenue Landfill ("Stickney"), the Tyler Street Dump ("Tyler"), and the Matzinger Landfill ("Matzinger").

2. Attached as Exhibit A is a statement (the "EPA Statement") which I signed after being interviewed for several hours by two (2) civil investigators with the U.S. Environmental Protection Agency ("U.S. EPA"). A copy of the EPA Statement was mailed to me on July 18, 1995 by Klaus M. Belohoubek, Vice President - General Counsel of Matlack, Inc. ("Matlack"). He asked me to review it because of the inconsistencies in the EPA Statement with conversations I have had with him and with counsel to Vallet Paint. The conversations I have had with Mr. Belohoubek and with counsel to Vallet Paint are memorialized in the following affidavits (the "Affidavits"), also attached to this affidavit:

Affidavit dated June 8, 1994, Exhibit B

Affidavit dated May 24, 1995, Exhibit C

Affidavit dated June 23, 1995, Exhibit D

3. The EPA Statement has many inconsistencies with the Affidavits. I would like to explain why.

4. Two (2) civil investigators from U.S. EPA interviewed me on October 25, 1994. I was bedridden at the time and needed a nurse to visit me several times each day. I had been bedridden for the past seven (7) months. Most of that time I was hospitalized, having suffered kidney failure and having had several surgical procedures relating to spina bifida, a spinal defect which I have had since birth. Most recently, I had a hip and my second leg removed and had been on morphine for a month thereafter.

5. At the time I was interviewed by the U.S. EPA civil investigators, I was off of the morphine but still on various medications. I do not recall which medications I was on, but I do recall that my eyes were very sensitive to light and that it was very difficult for me to see, almost impossible to read. I was not feeling well, had a very short attention span, and did not

particularly care if my statement was being recorded properly by the civil investigators.

6. I do recall that the interview was, for the most part, conducted by Frank Bolenzi, an individual I had spoken with about a year earlier. Also present was a large, heavysset woman whose name I believe was Margaret. I believe she wrote the statement which I signed.

7. I recall that both civil investigators kept trying to put words in my mouth. After I would answer a question, they would repeat back to me what I had said in a different way and with a different meaning before writing the information down. For example, I would refer to taking one (1) to five (5) gallon containers from Vallet Paint to one of the Sites and the civil investigators would refer to these cans as drums, even though I had made the distinction between pint size, gallon size, five (5) gallon size, sixteen (16) gallon size and fifty-five (55) gallon size containers. As another example, I mentioned that one of Vallet Paint's customers was Matlack and that I was using Matlack as an example of the kinds of deliveries that I made for many customers. The civil investigators would constantly include Matlack's name in the statement as it was being written up.

8. I recognize my signature at the end of the EPA Statement (Exhibit A). I also initialled the EPA Statement in a few different places where "L. S." is noted. Nothing else in the eight (8) page statement was written or rewritten by me.

9. At the end of about a two (2) hour interview, I was extremely tired and feeling ill. I wanted the civil investigators to leave and did not care whether the statement was accurate or not. I did not even read the entire statement. My eyes would not focus that well. I initialled and signed where I was asked to.

10. I do not believe that I told the civil investigators what ended up in the EPA Statement and would like to retract the statement.

11. Except as noted below, I believe the statements made in the Affidavits are true, correct and complete.

I made the following statement in the Affidavit attached as Exhibit C:

"9. During my employment with Vallet Paint, I never transported fifty-five (55) gallon drums, empty or otherwise, to Dura or the Stickney/Tyler Facility for disposal. To the best of my knowledge, information and belief, fifty-five (55) gallon

drums, empty or otherwise, were not disposed of at Dura or the Stickney/Tyler Facility by Vallet Paint. To the contrary, any empty drums which accumulated were usually sold to local drum recycling firms."

This is not entirely correct. On rare occasions, I believe I took fifty-five (55) gallon drums to one (1) or more of the Sites. I do not recall which ones. I do not believe it would have been Stickney since I recall it was closed for this kind of waste. I would guess that I took two (2) to three (3) drums per year to one (1) or more of the Sites. These may have been ruptured or damaged drums that could not be recycled. I did take empty paint cans and thinner cans to one (1) or more of the Sites on a regular basis, but these cans were the by-product of the mixing process at Vallet Paint. I did not pick up paint cans or thinner cans from Vallet Paint customers.

12. I never took any waste, either in cans or drums, from a Vallet Paint customer to any of the Sites.

13. Matlack was a customer of Vallet Paint. I may have made deliveries to Matlack as often as once or twice per month. I never picked up paint cans or thinner cans or anything smaller than a fifty-five (55) gallon drum from Matlack. I probably delivered fifty-five (55) gallon drums to Matlack and probably picked up some fifty-five (55) gallon drums from Matlack during the course of my employment with Vallet Paint. I do not specifically recall picking up any fifty-five (55) gallon drums from Matlack, but probably did so. I say "probably" only because I recall that Matlack sometimes received large shipments and these would probably have included fifty-five (55) gallon drums. I have no idea how many drums, if any, this might be. I do not know if the drums contain any residue or what the residue might have been. Drums would have been sealed and I would have had no reason to open them up.

14. I would guess that between myself and the other driver, that Vallet Paint delivered to its customers about two hundred and fifty (250) fifty-five (55) gallon drums per year. I have no recollection of the number of these drums that may have been picked up from customers after they were used. Some customers recycled the drums or used them for their own purposes. For example, some people would use them to collect and/or burn trash.

15. I am signing this affidavit voluntarily. I stand to gain nothing from signing it. I am simply doing this to correct any misimpressions that people may have. I am not aware that Matlack has any connection to the Sites.


Executed this 25 day of July, 1995 in Toledo, Ohio.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.



Larry Sherwin

Sworn to before me and subscribed in my presence this 25th day of July, 1995.



Notary Public

Stickney AV Landfill
Tyler ST Dump
Toledo OH

DATE: October 25, 1994

Person Interviewed: Larry Sherwin
Address: 3250 Schneider RD
APT C23
Toledo OH 43614
Telephone: 419 389-1697

Site: Stickney-Tyler

Interview Conducted By: [REDACTED] Civil Investigator
[REDACTED] Civil Investigator

I, Larry Sherwin agree to clarify and to amplify statements that I made in an October 17, 1993 telephone conversation with Frank Boenzi.

I, Larry Sherwin, worked as a delivery driver for Vallet Paint beginning in 1963 (the year of my marriage). I worked full time as a delivery driver until late 1964 or early '65. I, Sherwin, then moved to California. I was in California from 1966 to late 1968.

As a delivery driver for Vallet Paint I drove a pick-up truck making approximately 135 deliveries a day and driving 150 miles per day. My route covered southern and eastern Toledo, Ohio together with adjacent communities such as Maumee, Maline and Milbury. I delivered paints, thinners solders. Vallet Paint shipped paint in containers ranging from 1/2 pint to a gallon or five gallon container. Occasionally Vallet Paint shipped thinners and solvents in 55 gallon drums. Vallet Paint shipped thinner in one or five gallon cans or in 16 or 55 gallon drums.

When I first worked for Vallet Paint it mostly delivered automotive paint to body shops. Vallet Paint also delivered industrial type finishes. Vallet Paint's customers were body shops, trucking companies (They painted their own trucks.) and manufacturers who used the industrial paints and finishes on their own products.

Customers would put used thinners and solvents in the 55 gallon drums in which Vallet Paint had shipped thinners. As a courtesy to large customers, Vallet Paint instructed its drivers to remove these drums when a customer asked a driver to do so. I don't know whether Vallet Paint charged its customers for picking up the discarded thinners and solvents. I did not handle any money or billing for these pick-ups.

The driver would take the drum back to the cyclone fence cage (which was) about 10' x 15' in the rear of the site of Vallet Paint. The driver would offload the drum and place it in [the] cage with other used drums and full drums of used thinners and solvents. Some of the drums returned by the customers contained solvents and thinners. I did not know how much would be in a drum. It varied. The amount of thinner or solvent could be very little or five or more gallons. When I moved a drum I could usually hear chemicals sloshing around in them.

I, Sherwin, state that Matlack had contacted me [last] summer (1993) and asked me to sign a statement that I had never taken chemicals from Matlack to the Stickney or Tyler dump site. The corporate legal staff at the headquarters of Matlack sent me the statement by registered/certified mail. The statement relieved Matlack of responsibility for dumping at the Stickney and Tyler dumpsites. I do not remember the name of the attorney, but I think it was German society.

I signed and returned the statement to Matlack. I might have a copy of the statement that I signed. I said that I had never taken anything from Matlack directly to either the Stickney or Tyler sites or to any other dumpsite, [or] discarded thinners paints or coatings. I did pick up from Matlack drums that I believe contained various chemicals in different amounts, but I always took these drums to the Vallet Paint yard where I placed the drums with other drums in the cage. As far as I know, there was no cost to Matlack for this pickup of used drums. About once a week, twice a week in the summer, one of the drivers would take a truckload of drums to the Stickney site or to the Matzinger site. The truck used to haul the drums to the dumpsite was a 3/4 ton Ford F-100 pick-up. All waste picked up from customers was brought to Vallet and ultimately taken to the dump site by Vallet as a customer courtesy.

It would have been impossible to take a discarded drum directly from a Vallet Paint customer to any dumpsite because of the length of the daily route and the number of stops, about 135 stops during a regular shift.

I am certain that waste thinners from Matlack ultimately went to the Stickney and Matzinger sites. The drums that the customers asked Vallet Paint to pick up were always returned to the cage in the yard and Vallet Paint always sent the drums in the cage to Stickney or Matzinger sites. Any chemicals in drums that Matlack asked Vallet Paint to haul away went to a waste site. Unless there was a defective product that Vallet Paint returned to DuPont. Whenever Matlack wanted drums moved away Matlack would ask a Vallet Paint driver to take the drum away.

No driver of Vallet Paint was assigned to take the to take the discarded drums to a waste site. Whichever driver was free would do it. When I worked for Vallet Paint it employed two full time and several part time drivers. Most of the part time help, including the drivers, were either fire or police officers. Vallet Paint had two trucks on regular runs and a third for short hops and emergencies.

When I took drums from Vallet Paint to the Stickney and Matzinger sites, I never talked to anyone. I would drive to the site. There was a shack near the entrance and usually there was a man in it. The man would see would see the Vallet Paint's truck and wave it through. I could not say with certainty that every time someone waved me into the landfill site, it was the same person or that the person was employed by the dump operator. At that time, 1963-65 and 1968, there were many scavengers hanging around the landfills.

The man in the shack would wave the truck to wherever the dumping was occurring. There was a bulldozer there and the waste would soon be covered over.

I, Sherwin, frequently saw Pinkerton dumping load after load of treated tobacco at Stickney and Matzinger. Pinkerton had a plant at Monroe and Detroit, behind Swayne Field. Pinkerton dumped a lot of discarded materials. The scavengers would immediately go through it. They would pick out cigars. I believe Pinkerton is still operating although under another name. I believe that it operates at the same location.

Vallet delivered a lot of paint to a small air freight outfit located near the municipal airport. This is Metcalfe Field.

I heard that DuPont discarded waste at the Stickney site. I never personally saw DuPont dumping waste at Stickney.

All the manufacturers and businesses dumped at the Stickney and Matzinger sites during the 1960s. If a business had stuff to dump, they dumped it there. In the 1960's no one shipped waste out of state as they now do.

I never took discarded drums to the Tyler site. When I was driving for Vallet Paint, The Tyler site did not take big waste, large hard objects. Mostly Tyler took soft stuff like leaves.

On a weekly basis, and twice a week during the summer, a Vallet Paint driver would take drums from the cage to a dump site. The drums contained not only used thinners returned by the customers, but waste paint or thinners. Other drums in the cage held paints that the mixing crew had mistakenly prepared. If the colors were mixed wrong or a little off, the mixer would discard the paint. The mixers never told the owners, Joe Vallet and Brian Hartley, about their mistakes. They would have blown up. The mixer just put the wrong stuff in big cardboard boxes in which empty cans were shipped. I never talked with anyone about these mistakes. As far as I know, no one talked about the mistakes. "Mum's the word." I didn't want to make any enemies on the job.

The part Timers worked for the fire or police department. I can remember:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I am willing to stand behind this statement that Vallet Paint hauled to Stickney waste paint and materials discarded by its big customers. These customers included Matlack. I never took anything directly from a customer to a dumpsite. The drivers took all the discards from big customers asked Vallet to haul away back to the cage in the Vallet Paint yard. From there at a later date Vallet Paint took the customers' discards and its own mistakes to the dumpsites.

I expect to be at home. During the summer I am usually home by 9:00 p.m. During the winter and in bad weather I am at home more. If I am in the hospital, I will be in the Toledo Hospital.

I have read the above and affirm that it is true to the best of my knowledge. Statement of eight [holographic] pages.

handwritten

[signed] L. Sherwin

10/27/94

Witnesses: [signed] [REDACTED] Civil Investigator 10/27/94
Name Date

[signed] [REDACTED] Civil Investigator 10/27/94
Name Date

178

Date: October 25, 1944

Person Interviewed: Larry Sherwin

ADDRESS 3250 Schneider Road

Apt C23, Td800, CUL

Telephone: (419) 389-1697

43614

Site: Stockney - Tyler

Interview Conducted by [REDACTED], Civil Investigator
[REDACTED], Civil Investigator

L. Larry

~~The~~ Sherwin agreed to clarify and amplify statements that ~~he~~ I made in an October 17, 1993 telephone conversation with Frank Boenzi.

I, Samy Sherwin worked as a delivery driver for Valette Paint beginning in 1963 (the year of ~~Samy~~ marriage). I ~~He~~ worked full time as a delivery driver until late 1964 or early '65. I, Sherwin then moved to California. Sherwin I was in California from 1966 to late 1968.

As a delivery driver for Vallet Paint ^{L.S.} I drove a pick up truck making approximately 135 deliveries a day and driving 150 miles per day. ^{L.S.} My route covered southern and eastern Ohio, Ohio together with adjacent communities such as ^{Maryland} ~~Delaware~~ ^{West Virginia} ~~Delaware~~ ^{Florida} delivered paints, thinners, solvents. Vallet Paint shipped paint in containers ranging from 1/2 pint to a gallon or five gallon containers. Occasionally Vallet shipped ^{thinners and solvents} ~~paint~~ in 55 gallon drums. Vallet Paint shipped thinners in one to five gallon cans or in 16 or 55 gallon drums. L.S.

L.S.

Stickney AU }
Tyler St } Ste

2/8
1425/44
Sherwin Interview

L.S.

~~Sherwin said that~~ When he first worked for Vallit Paint, it mostly ~~shipped~~ ^{delivered} automotive paints to body shops. ~~Vallit Paint also shipped industrial type finishes.~~ Vallit Paint's customers were body shops, trucking companies (they painted their own trucks) and manufacturers who used the industrial paints and finishes on their own products. ~~Sherwin particularly remembered~~

~~making frequent deliveries to a manufacturer of air conditioners that was located in Holland, Ohio.~~

~~Sherwin said that~~ Customers would put used thinners and solvents in the 55 gallon drums in which Vallit Paint had shipped thinners ~~and occasionally~~ ^{as} ~~paints~~. As a courtesy to large customers, Vallit Paint instructed its drivers to remove these drums when a customer asked a driver to do so. Sherwin ~~said that he had no knowledge~~ ^{didn't know} if whether Vallit Paint charged its customers for picking up discarded thinners and solvents. Sherwin had ~~never heard~~ ^{not heard} any money or billing for their pickups.

^{caption be}
The driver would take the drum back to the cage above ^{10' x 15' in the garage} of Vallit Paint. The driver would offload the drum and place it in a cage with other used drums. ^{but drums for used thinners and solvents} Some of the drums returned by the customers contained solvents and thinners. Sherwin did not know how much would be in a drum. It varied. The amount of thinner or solvent could be very little, or five or more gallons. When Sherwin moved ~~the~~ ^a drum, ~~he~~ ^{he} could ^{usually} hear chemicals sloshing around in them. L.S.

L.S.

Stickney AU } site 3/8
Tyler ST } 10/25/94
Sherwin-Tint

L.S. State

I, Sherwin ~~State~~ that Matlack
had contacted ~~me~~ this summer (1993) and asked
~~him~~ me to sign a statement that ~~I~~ had never
taken chemicals from ~~the~~ Matlack to the Stickney
or Tyler Street dump site. The corporate legal staff
at the ~~L.S.~~ ~~State~~ headquarters of Matlack sent W
Sherwin the statement by registered/certified mail.
The statement relieved Matlack of responsibility
for dumping at the Stickney and Tyler dumpsites.

I do not remember the name of the attorney, but I think it was Jensen ^{Esquire}.

Sherwin said that he ~~signed~~ and returned
the statement to Matlack. ~~I signed the statement~~
* The statement that ~~I~~ signed, ~~L.S. State~~ ~~that~~
I had never taken anything from Matlack directly
to either the Stickney or Tyler sites or to any other
dump site, discarded thinners, paints or coatings.
I ~~signed~~ ^{picked up} from Matlack drums that
L.S. ^{contained} various chemicals in different amounts
but ~~I~~ always took these drums to the Vallat
Paint yard where ~~I~~ placed the drums with other
drums in the cage. As far as Sherwin knows,
there was no cost to Matlack for this pickup of used
drums. About once a week, twice a week in the
summer, one of the drivers would take
a truckload of drums to the Stickney site
or to the Matzinger site. The truck used ^{L.S.}
L.S. ^{to haul} drums to the dumpsites was a ~~truck~~
3/4 TON ^{pick-up} ~~truck~~ ^{pick-up}. All waste picked up from
customers was brought to Vallat and ultimately taken
to the dump site by Vallat as a customer courtesy.

L.S.

Stuckney Tyler sites

7/8

10/25/64

Sherwin Interview

~~Sherwin~~ said that it would have been impossible to take a discarded drum directly from a Vallet Paint customer to any dump site because of the length of the daily route and the number of stops ~~at~~ 135 during a regular shift.

15. ~~Sherwin~~ said that ~~he~~ ^{ultimately} certain that waste thinners from Matlock ~~went~~ ^{went} to the Stuckney and Matzyger sites. The drums that the customers asked Vallet Paint to pick up ^{were} always returned to the cage in the yard and Vallet Paint always sent the drums in the cage to Stuckney or Matzyger sites. ~~Any~~ ^{Only} chemicals in drums that Matlock ~~returned~~ asked Vallet Paint to haul away went to a waste site. Unless there was a defective product that Vallet Paint returned to DuPont.

~~Sherwin~~ said ~~that~~ ^{Whenever Matlock wanted the drums moved away,} Matlock would ask a Vallet Paint driver to take ~~away~~ ^{the} drum.

16. ~~Sherwin~~ said that ~~the~~ ^{no} driver ~~was~~ of Vallet Paint was assigned to take the discarded drums to a waste site. Whichever driver was free would do it. When ~~Sherwin~~ worked for Vallet Paint, it employed two fulltime and several parttime drivers. Most of the parttime drivers ^{helped} were either firemen or police officers. Vallet Paint had two trucks on regular runs and a third for short hops and emergencies.

h. 5.

I When ~~he~~ took drums from Valler Paint to the Stickney and Matzinger sites, Sherwin never talked with anyone. ~~He~~ would drive to the site. ~~There~~ There was a shack near the entrance and usually there was a man in it. The man would see Valler Paint's truck and wave it through. ~~Sherwin said that~~ I could not say with certainty that every time someone waved ~~them~~ into the landfill site, it was the same person or ~~that~~ that the person was employed by the dump operator. At that time ~~the~~, 1963-65 and 1968, there were many scavengers hanging around the landfill.

The man in the shack would wave the truck to wherever dumping was occurring. There would be a bulldozer there and the waste would soon be covered over.

L.S. ~~Sherwin~~

~~Sherwin saw her~~ I, Sherwin frequently saw Pinkerton dumping load after load of treated tobacco ^{Stickney & Matzinger} Pinkerton had a plant at Monroe and Detroit behind Swayne Field. Pinkerton dumped a lot of discarded materials. The scavengers would immediately go through it. They would pick out cigs. I believe Pinkerton is still operating although under another name. Sherwin believes that it operates at the same location.

Vallet Paint delivered a lot of paint to ~~which~~ a small air freight outfit located near the municipal airport. This is, Metcalfe Field.

~~I~~ I heard that DuPont discarded waste at the Stuckney site. I ~~the~~ never personally saw DuPont dumping waste at Stuckney. Jeep Corporation, now Chrysler, dumped at Stuckney.

L.S. ~~Sherwin said that~~ All the manufacturers and businesses dumped at the Stuckney and Protygers sites during the 1960s. If a business had stuff to dump, they dumped it there. In the 1960s, no one shipped this waste out of state as businesses now do.

L.S. ~~Sherwin said that~~ I never took discarded drums to the Tyler site. ~~But~~ When I was driving for Vallet Paint, the Tyler site did not take big waste, large hard objects. Mostly Tyler took soft stuff like leaves.

On a weekly basis and twice a week during the summer, a Vallet Paint driver would take drums from the cage to a dump site. The barrels drum contained not only used thinners returned by the customer, but ~~also~~ ^{other thinners} ~~other drums~~ ^{drums} in the cage held paints that the mixing crew had mistakenly prepared. If the colors were mixed wrong or a little off, the mixers would

2.3.

big cardboard boxes that
empty paint cans were
shipped in.

Stickney-Tyler & Sons
Sherwin Interview.

7/10

10/25/84

Discard the paint. The misers never told
the owners Joe Vallet and Brian Hartley
about their mistakes. They would have blown up
the misers first put the wrong stuff in barrels
big cardboard boxes that empty paint cans were
shipped in. The misers never told the owners
Sherwin said that he never talked with anyone
about these mistakes. As far as I know,
no one talked about the mistakes. "Mum's the
word." Sherwin didn't want to make any
enemies on the job.

2.4.

Sherwin said that the part-timers worked
for the fire or police departments. Sherwin could
remember:

[REDACTED]

2.5.

Sherwin said that he was willing to stand
behind his statement that Vallet Paint hauled
to Stickney waste paint and materials discarded
by its big customers. These customers
included Matlock. Sherwin never took anything
directly from a customer to a dumpsite. The driver
took all the discarded that its big customers
asked it to haul away back to the cage in the Vallet
Paint yard. From there at a later date L.S.

L.S.

Stickney - Tyka S. 8/8

10/25/94

Sherwin Interview

Vallet Paint took the customers' records and
its own mistakes to the dumpsters.

I expect to be home. During the summer
I am usually home by 9:00pm. During the winter
and in bad weather I am at home more. If I am
in the hospital, I will be in Toledo Hospital.


I have read the above and affirm that
it is true to the best of my knowledge, ~~Sherwin~~ ~~of~~ ~~the~~ ~~company~~

P. J. Sherwin

Name

10/27/94
Date

Witness:



Civil Investigator

10/27/94

Date

Civil Investigator

10/27/94

Date

EXHIBIT B

AFFIDAVIT

I, LARRY SHERWIN, do certify as follows:

1. I worked as a driver for Vallet Paint Company ("Vallet Paint"), located on Adams Street between the years of 1963 to 1965 and again between the years of 1968 to 1970.

2. Matlack, Inc. ("Matlack") was a customer of Vallet Paint. Matlack was one of many customers of Vallet Paint for whom I handled deliveries. On occasion, I would deliver cans of paint to customers of Vallet Paint, including Matlack. On occasion, I would also deliver sixteen (16) gallon or fifty-five (55) gallon drums to customers of Vallet Paint, including Matlack. I am not sure what the drums contained, but believe that they contained some form of solvent. I do not recall how often I made deliveries to Matlack, nor do I recall with any specificity, what I delivered to Matlack.

3. In connection with my deliveries to various customers, I would on occasion pick up empty drums from those customers. On occasion, there would be some residue of material left in these drums. As the drums were sealed, I have no way of knowing what the residue might have been. I believe that on occasion I picked up empty drums from Matlack. I do not recall how often this would have occurred or whether there was any residue in any of these drums.

4. Any drums picked up from customers, including Matlack, were returned directly to Vallet Paint. I did not take drums or any other materials from Matlack to the Stickney Avenue Landfill or Tyler Street Dump. I did not take drums or any other materials from Matlack to the Dura Avenue Landfill.

5. As part of my duties, I would ultimately take Vallet Paint trash to various dumps in the area. I have no way of knowing if any drums collected from Matlack or any other customer went to any particular dump or site, or whether such drums had any residue in them.

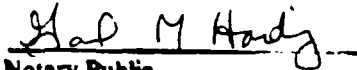
Executed this 8 day of June, 1994, in Toledo, Ohio.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.


Larry Sherwin

Sworn to and subscribed to

me this 8th day of
June A.D. 94.


Notary Public

AFFIDAVIT OF LARRY SHERWIN

STATE OF OHIO)
) ss:
COUNTY OF LUCAS)

I, Larry Sherwin, being first duly cautioned and sworn, state as follows:

1. I was employed at Vallet Paint Service Company ("Vallet Paint") located at 1808 Adams Street, Toledo, Lucas County, Ohio from approximately 1963 to 1965, and again from approximately 1968 to 1970. During my employment with Vallet Paint, I held the position of delivery driver.

2. The duties and responsibilities associated with the position of delivery driver included making deliveries, doing routine cleaning work, and hauling waste materials generated by Vallet Paint. I would frequently deliver cans of paint to customers. From time to time, I would deliver sixteen (16) gallon and fifty-five (55) gallon drums to customers. I believe the drums contained some form of solvent.

3. From time to time, I would pick up empty drums on my delivery runs. I would bring the drums back to Vallet Paint, and the drums would be stored behind the garage. On rare occasions, the drums would have some minor amounts of residue in them. I do not know what the residue might have been, nor do I know how often this would have occurred.

4. As a result of my employment with Vallet Paint, I became extremely familiar with not only the nature and amount of waste materials generated by Vallet Paint, but with the handling and disposal of those waste materials by Vallet Paint as well.

5. Specifically, the waste materials generated by Vallet Paint consisted almost entirely of empty five (5) gallon paint cans containing minor amounts of paint residue, empty paint thinner cans containing only minor amounts of thinner residue, empty cardboard boxes and paper materials.

6. The empty paint cans and thinner cans generated by Vallet Paint were the main byproducts of the paint mixing process. If a customer needed a certain color of paint, usually two or more different colors would have to be mixed together, sometimes with thinners, in order to obtain the desired result. When the paints were mixed, the paint cans would be tilted upside down and drained so as to avoid wasting any paint whatsoever. Thus, empty paint cans and thinner cans containing minor amounts of paint and thinner residue were the natural result of the paint mixing process.

7. The cardboard boxes disposed of by Vallet Paint were, for the most part, the shipping boxes for the cans of paint and thinner purchased by Vallet Paint.


8. Except to the extent that Vallet Paint's waste materials contained empty paint cans and thinner cans with only minor amounts of residue in them, as previously mentioned in paragraphs 5 and 6 above, during my employment with Vallet Paint, I never transported paints or thinners from Vallet Paint to the Dura Avenue Landfill ("Dura") or the Stickney Avenue Landfill/Tyler Street Dump (the "Stickney/Tyler Facility") for disposal. To the best of my knowledge, information and belief, paints and thinners were never disposed of at Dura or the Stickney/Tyler Facility by Vallet Paint.

9. During my employment with Vallet Paint, I never transported fifty-five (55) gallon drums, empty or otherwise, to Dura or the Stickney/Tyler Facility for disposal. To the best of my knowledge, information and belief, fifty-five (55) gallon drums, empty or otherwise, were not disposed of at Dura or the Stickney/Tyler Facility by Vallet Paint. To the contrary, any empty drums which accumulated were usually sold to local drum recycling firms.

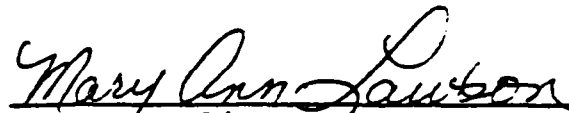
10. During my employment with Vallet Paint, I never picked up waste materials from any Vallet Paint customer and hauled them to Dura or the Stickney/Tyler Facility for disposal. To the best of my knowledge, information and belief, Vallet Paint neither instructed nor permitted its delivery drivers to pick up waste materials from any of its customers and haul them to Dura or the Stickney/Tyler Facility for disposal.

11. I am no longer employed by Vallet Paint and do not stand to gain in any way, financially or otherwise, as a result of my giving this statement.

FURTHER AFFIANT SAYETH NAUGHT.


Larry Sherwin

Sworn to before me and subscribed in my presence this 24th
day of May, 1995.


Notary Public

H:\a06069d5 aff

MARY ANN LAWSON
NOTARY PUBLIC, STATE OF OHIO
My Commission Expires Aug. 28, 1997

AFFIDAVIT

I, LARRY SHERWIN, do certify as follows:

1. Attached is an affidavit which I executed on June 8, 1994, (the "1994 Affidavit"). It is based on several conversation I had with Klaus M. Belohoubek, Vice President - General Counsel to Matlack, Inc. At that time, Mr. Belohoubek asked me to carefully review the 1994 Affidavit to make sure that I agreed with what it stated. He also offered to make any necessary additions, deletions or corrections before I signed it. I had no changes to make to it since it was an accurate portrayal of the facts. To the best of my knowledge, the 1994 Affidavit is still an accurate portrayal of the facts.

2. Mr. Belohoubek did not pay me for signing the 1994 Affidavit, nor did he coerce me into signing the 1994 Affidavit in any way. I did so of my own free will. Mr. Belohoubek was polite and respectful at all times. When he phoned me yesterday, I recalled having spoken to him previously and agreed to meet with him the following day in order to sign this affidavit.

3. I never told U. S. EPA that the 1994 Affidavit had any errors in it. It does not.

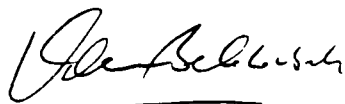
4. I never told U.S. EPA that I dumped Matlack waste at the Stickney Avenue Landfill or Tyler Street Dump (the "Sites"). I did not. If any statement attributed to me has this information in it, it is incorrect. U. S. EPA had me sign a number of lengthy statements. I tried to correct what I could, but I may have missed something.

5. I am signing this affidavit voluntarily. I stand to gain nothing from signing it. I am simply doing this to correct any misimpressions that people may have. I am not aware that Matlack has any connection to the Sites.

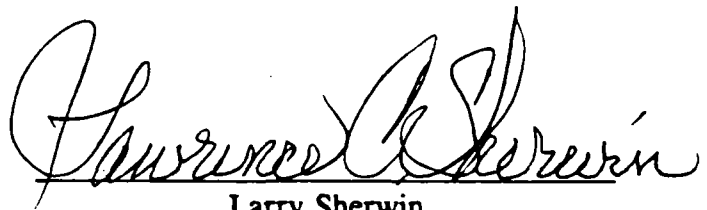
Executed this 23rd day of June, 1995, in Toledo, Ohio.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.

Witnessed:



Klaus M. Belohoubek, Esq.



Larry Sherwin

6-23-95

AFFIDAVIT

I, LARRY SHERWIN, do certify as follows:

1. I worked as a driver for Vallet Paint Company ("Vallet Paint"), located on Adams Street between the years of 1963 to 1965 and again between the years of 1968 to 1970.

2. Matlack, Inc. ("Matlack") was a customer of Vallet Paint. Matlack was one of many customers of Vallet Paint for whom I handled deliveries. On occasion, I would deliver cans of paint to customers of Vallet Paint, including Matlack. On occasion, I would also deliver sixteen (16) gallon or fifty-five (55) gallon drums to customers of Vallet Paint, including Matlack. I am not sure what the drums contained, but believe that they contained some form of solvent. I do not recall how often I made deliveries to Matlack, nor do I recall with any specificity, what I delivered to Matlack.

3. In connection with my deliveries to various customers, I would on occasion pick up empty drums from those customers. On occasion, there would be some residue of material left in these drums. As the drums were sealed, I have no way of knowing what the residue might have been. I believe that on occasion I picked up empty drums from Matlack. I do not recall how often this would have occurred or whether there was any residue in any of these drums.

4. Any drums picked up from customers, including Matlack, were returned directly to Vallet Paint. I did not take drums or any other materials from Matlack to the Stickney Avenue Landfill or Tyler Street Dump. I did not take drums or any other materials from Matlack to the Dura Avenue Landfill.

5. As part of my duties, I would ultimately take Vallet Paint trash to various dumps in the area. I have no way of knowing if any drums collected from Matlack or any other customer went to any particular dump or site, or whether such drums had any residue in them.

Executed this 8 day of June, 1994, in Toledo, Ohio.

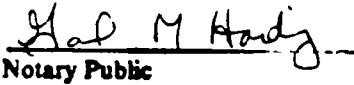
I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct.


Larry Sherwin

Sworn to and subscribed to

me this 8th day of

June A.D. 94.


Notary Public